United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

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74-2124

United States Court of Appeals

For the Second Circuit.

THE UNITED STATES OF AMERICA,

Appellee,

-against-

JOSEPH MAURO.

Appellant.

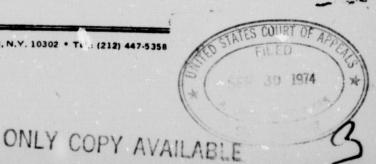
On Appeal From The United States District Court For The Eastern District Of New York

Appellant's Appendix

AARON SCHACHER Attorney for Appellant 32 Court Street Brooklyn, New York (212) 855-1003

ARNOLD E. WALLACH Of Counsel

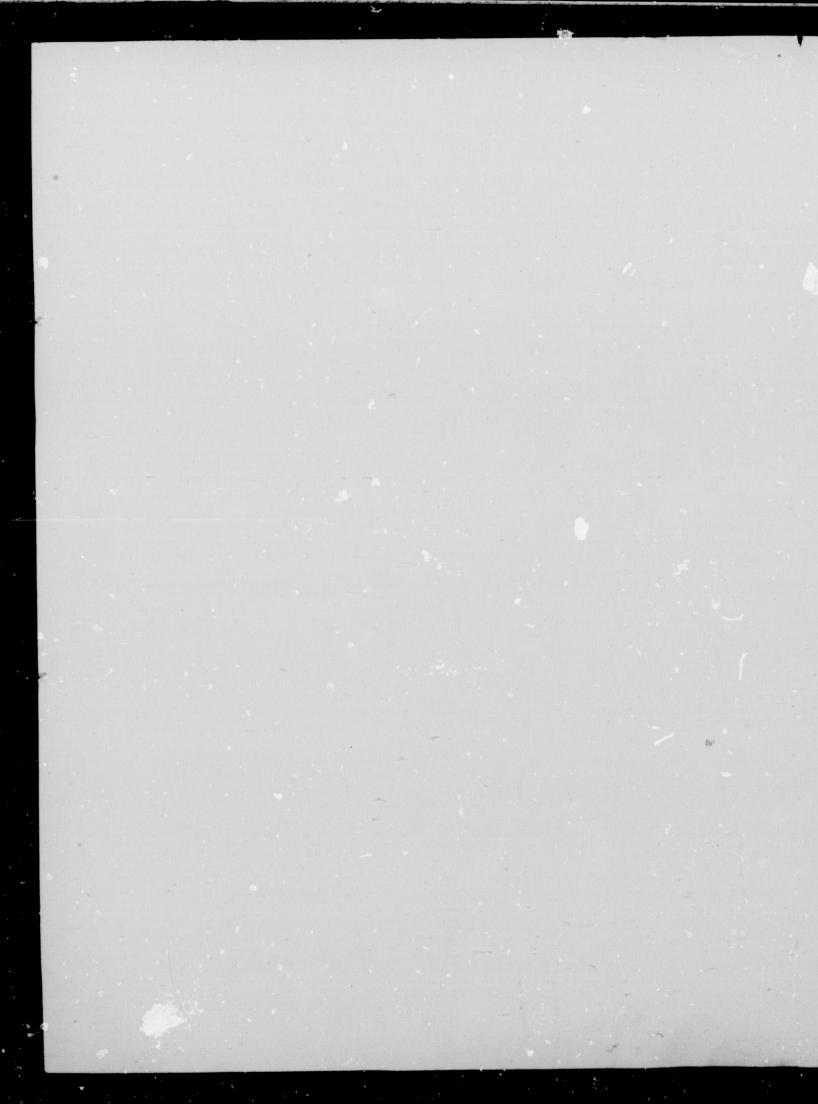
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Charge of the Court



	THE UNITED STATES FS. JOSEPH M. MAURO			GLOST	For U.S.:	ATTORNCYS	
			· ·		For Defendent George 'os 51 Chamber BE3-8120	senbaum	
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Witnesses,	er 8 Court,						
	-			4			
DATE	1			PROCEEDINGS			
7-13-72	7-13-72 Before MISHLER, CH.J Indictment filed & ordered sealed by the court. Bench warrant ordered/issued.						
7-14-72				ed. Deft pro	duced on a t	pench warz	ant. In-
-24-12	12-4 4 arder	ad unseal	ed. Cour	isel G. Rose.	baum present	nce.	
	and enters a p	lea of no	t guilty	. Deft on ov	m recognizat	ice.	
7-14-72	Notice of appe	arance fi	led.	. 200		174	,
1-11-72	Govers Notic	e of Read	iness f	or Trial fil	nsei present	Pre tria	1
1/4/74	Before JUDD,	J Case (ralled	Notions by	1/18/74-Case	e adjd to	1/73/74
	for trial	eld and co	oncluded	1 1.0' tota by			
1 12 74	for trial Stenographers	transcri	pt file	d dated 7-14	-72 (in file	72CR-857	<u>) </u>
1-17-74	Stellographer	•	OVER	•) 4			
-			10800				

72CR 858

DATE	PROCEEDINGS 1.4
1 17-74	Motice of motion to consolidate this indictment and 72CR857 filed
	(notice inserted into 72CR857)
1-17-74	Before JUDD J - Case called - Deft not present - Counsel present - Conference
<u> </u>	held and concluded - Govt's motion to consolidate 720057 and 720050 412
	and decision reserved- Deft to submit further papers- Case adjd to
1-21-74	Tartice of Motion filed for dismissal of the Indictment (rec. 1227.7)
1-22-74	Before JUDD ,JCase called- Deft not present- Counsel present- Deft's
	4- at and as angued and denied
1-22-74	By JUDD, J Order filed denying deft's motion for reduction of sentence
•	(see back of motion papers for order)
1-23-74	(see back of motion papers for order) By JUDD, J - Memorandum and Order filed granting motion to consolidate
	case with 72 CR 857 and that the cases proceed to joint trial on 1-28-74
	unless an adjournment is granted by the court on notice for good cause.
1-24-74	Stenographers transcript filed dated Jan. 22, 1974. (transcript in 72CR
1-28-7	Before JUDD, J- case called - deft present - coursel reported
	an trial - adid to 2-25-74 for trial.
1-29-74	Stenographers transcript lifed dated dans 2.7
	in 72 CP 857) Before MISHLER, CH J - case called - deft & counsel Aaron Schacter
2-25-74	(72 on 067) consolidated in the one tildi
· <u>· </u>	present - Both cases (72 CR 637) consortated - trial contd to 2-27-74. ordered and BEGUN. Jurors selected and sworn - trial contd to 2-27-74.
	ordered and BEGUN. Julius selecter
2-27-74	Before MISHLER, CH J - case called - deft & counsel Aaron Schacter present - Trial resumed - Motion by deft for a mistrial is denied -
	present - Trial resumed - Motion by deta 1074
	Trial contd to Feb. 28, 1974.
3-1-74	
	Before Mishler, Ch J - case called - deft & counsel present - trial res
3-4-74	suppression hearing held - motion to suppress is denied - hearing
:	suppression hearing return more to the suppression hearing return more than the suppres
1	concluded - trial contd to 3-5-74. Before MISHLER, CH.J Case called - Deft and counsel present - Trial r
3-5-74	Gov't rests- Motion by deft for a verdict of acquittal as to both ind
	ments- Motion denied- Deft rests and renews his motion- motion denied
100	contd to 3-6-74
	Fefore MISHLER, CH.J Case called - deft and counsel present - Trial re
· ? -: ? -7"	Court charges jury- Order of sustenance signed- jury retires to delib
·	Serry returns and renders a verdict of not guilty to count 1 in 72 CR
	Jan Peruma and Tenders & vo. day

DATE	PROCEEDINGS
	Trial contd to 3-7-74 for further deliberation
3-6-74	By MISHER, CH.J Order for sustenance filed
3-7-74	refore MISHER, CH.J Dert and counsel present - Trial resumed - Jury
	reducts and renders a verdict of guilty on count 1 2 and hand
	- Jury of court 3- Jury polled- Jury discharged- Trial conclude: wat
	by the Gove to remand the deft denied- Bail conditions center was
	or verdict signed by the foreman to be docketed and filed Sontained
	adju without date- Notion by deft to set aside the vendict donted
3-7-74	Remorandum of Verdict filed (entered in file 72 CR 857)
3-7-74	By MISHLER, CH.J 3 Orders of sustenance filed(entered in file 70003
3-7-74	stenographers Transcript - dated - 2-25-74, 2-27-74(2 volumes) 3-28-75
	111ed (entraced in filed 72 CR 857)
5-1-74	Letter to chambers from Aaron Schacher, esq. filed re:confirming adje
	ment of sentencing from 5-3-74 to 5-17-74 at 10:00 A.M.
5 <u>-3-74</u>	Before MISHUER, CH.J Case called - Sentence add to 5-17-7% on conse
5-17-74	- Case called. Sentence add to 6-7-74 or consen
6/7/74	i of the cert (Mr. A Schachen masses
0,7,74	adjd to July 26, 1974 on consent
6-7-74	4 volumes of stenographic transcripts filed (pgs 585 to 1267) placed in file 72 CR 858.
7-26-74	Before MISHLER, CH J - case called - deft & counsel Aaron Schacher
	present - deft sentenced to imprisonment pursuant to 18./208(a)(2)
	for a period of 2 years on each of counts 2 & 3 to run concurrently
	and to run consecutive to sentence imposed in District
	of NY. Imposition of sentence is suspended on count (1) and the
	deft is placed on probation for 2 years. Probation to commence at
	the end of prison sentence. In the event the prison term imposed
	in Southern District of NY commences after the term here imposed
	probationary term is to commence at the expiration of the Southern
-4	District of MY sentence. Deft released on bail pending appeal-
	dert advised of his rights to appeal.
7-26-74	Judgment and Commitment and Order of Probation filed - certified
8-2-74	copies to Marshal & Probation
8-2-74	Docket entries and duplicate of Notice of Appeal mailed to C of A.
8-9-74	Order received from court of appeals and filed that record be docketon
	on or before 8-30-74
D. C. 109	A-3 ONLY COPY AVAILABLE

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INDICTMENT

EJB:PBB:rb F. #723418

IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUL 131972 ★

TIME A.M.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

JOSEPH M. MAURO,

Defendant.

INDICTMENT

CR. NO.____

(Title 18, United States Code, §§472, 473, and 371)

THE GRAND JURY CHARGES:

72CR 858

COUNT ONE

On or about the 4th day of January, 1972, within the Eastern District of New York, the defendant JOSEPH M. MAURO, with the intent to defraud, did possess and conceal approximately five hundred (500) counterfeit Ten Dollar (\$10.00) United States Federal Reserve Notes, bearing various serial numbers, one of which was Serial Number B77046377A, knowing the same to be forged and counterfeited. (Title 18, United States Code, Section 472).

COUNT TWO

On or about the 4th day of January, 1972, within the Eastern District of New York, the defendant JOSEPH M. MAURO, wilfully and knowingly did transfer and deliver approximately five hundred (500) falsely made, forged and counterfeited Ten Dollar (\$10.00) United States Federal Reserve Notes, bearing various serial numbers, of which one was serial number B77046377A, with the intent that the aforesaid notes be passed, published and used as true and genuine. (Title 18, United States Code, Section 473).

COUNT THREE

On or about and between the 1st day of October, 1971 and the 30th day of December 1971, both dates being approximate and inclusive, within the Eastern District of New York, the defendant JOSEPH M. MAUKO, willfully and knowingly did transfer and deliver ten (10) United States Federal Reserve Notes, bearing Serial Numbers 1002096377A, 1977040242A, and 1977046377A, with the intent that the aforesaid notes be passed, published and used as true and genuine. (Title 18, United States Code, Section 473).

COUNT FOUR

On or about and between the 1st day of October, 1971, and the 4th day of January, 1972, within the Eastern District of New York, the defendant JOSEPH M. MAURO and Louis J. Stoppiello, not named herein as a defendant, did unlawfully, knowingly, wilfully and feloniously conspire, combine, confederate and agree together and with each other to violate Title 18, United States Code, Section 172, in that they did, with intent to defraud, agree to possess, conceal and sell falsely made, forged, counterfeited and altered obligations and securities of the United States, knowing the same to be falsely made, forged, counterfeited and altered.

In furtherance of, and for the purpose of effecting the objects of the aforesaid conspiracy, the defendant JOSEPH M. MAURO, committed the following:

OVERT ACT

On or about the 4th day of January, 1972, within the Eastern District of New York, the defendant

JOSEPH M. MAURO did meet with Louis Stoppiello and deliver to him approximately five hundred (500) altered obligations and securities of the United States. (Title 18, United States Code, Section 371).

A TRUE BILL.

Juny it 71. C loss

ROBERT A. MORSE

United States Attorney

Eastern District of New York

JUDGMENT AND COMMITMENT

JUDGMENT AND COMMITMENT (Rev. 2-68) /ORDER OF PRUBALLON

FOR T	Bistrict Court FILES W YORK U.S DESTRICT COURT ED. NY
United States of America	# NIT 56 1514 . *:
v. JOSEPH M. MAURO	No. 72 CR 858
	N'PILMED

On this 26th day of July , 19 74came the attorney for the government and the defendant appeared in person and with counsel

IT IS ADJUDGED that the defendant upon MXXXXXXXX a verdict of guilty

has been convicted of the offense of violating T-18, U.S.Code, Secs. 472,473 & 371 in that on or about and between Oct. 1, 1971 and Jan. 4, 1972, the defendant, with the intent to defraud, did possess and conceal and did transfer and deliver 500 falsely made, forged and counterfeited Ten Dollar(\$10.00) U.S. Federal Reserve Notes, with the intent that the aforesaid notes be passed, published as true and genuine

as charged in counts 1, 2 & 4

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recomn, ands commitment to

Great Mices her United States District Judge.

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A-7

IT IS FURTHER ORDERED that the brief and appendix of appellant be filed on or before September 30, 1974

IT IS FURTHER CRDERED that if appellant's brief or appendix is not filed by the time directed, the appeal shall be dismissed forthwith.

IT IS FURTHER ORDERED that the United States file its brief on or before October 30, 1974

IT IS FURTHER OPDERED that the argument of the appeal be read be heard during the week of November 4, 1971

A. DANIEL FUSARG Clerk

Dated: August 8, 1974

12 4 010

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

U.S. DISTRICT COURT LD. N.Y

AUG 9 1974

Docket No. 74-8284

JOSEPH MAURO,

Defendant-Appellant.

TIME AM

BEFORE: IRVING R. KAUFMAN, Chief Judge

The court noting that Aaron Schacher, Esq. is counsel of record for Joseph Mauro, Defendent-Appellant and being advised as to the progress of the appeal and that notice of appeal was filed on August 2, 1974

IT IS HEREBY ORDERED that the record be docketed on or before August 30, 1974

IT IS FURTHER ORDERED that if the record is not docketed by the time directed, the appeal shall be dismissed forthwith.

IT IS FURTHER ORDERED that the appellant may, without further order of the court, remove the record for purposes of preparation of the appellant's brief and appendix, provided that the record is returned to the custody of the court on or before the date set for filing the appellant's brief.

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THE WITNESS: He took that money and put it on my bill --

MR. BERGMAN: That is not responsive.

THE COURT: Go ahead.

- Q Was anything said to you by Joseph Mauro as to how he would collect the money from Sal that was owed to him?
 - A Oh, if he found him --

THE COURT: What did he say?

THE WITNESS: He'd be hurt.

THE COURT: That is the exact language he used?

THE WITNESS: He would be hurt.

THE COURT: Go ahead.

- of the summer and the fall you owed Joseph Mauro somewhere in the neighborhood of \$2,000 in missed interest payments and outstanding principal; correct?
 - A Right.
- Q I believe you also testified that he was no longer lending any money directly to you at that time; is that correct?
 - A Yes.
- Q Did you ever have any discussions with him at that time concerning the manner or means or ways in which you could repay him the money that you owed him?

1			Stoppiello-lirect	49
2	۸.	Yes	, we did. We finally	
3	Q	Yes	or no.	-
4	А	Yes	, we did have discussions concerni	ing
5	0	On !	how many occasions, from October of	on, would you
6	say you d	iscusse	d ways in which you could pay the	noney back
7	to Joseph	Mauro?		
8	A	It,	was on more than one or two occas:	ions that we
9	discussed	this.		
0	Q	Wha	t discussions did you have on thos	se occasions
1	with Jose	ph Maur	0?	
2	A	Tha	t something would have to be done	to make
3	some paym	ent, to	make some of the payments.	
4	ō	Was	anything further stated by Mr. M	auro?
15	A	Wel	1, different things came up like	selling
16	like sell	ing swa	g goods or things like that in or	der to make
17	enough mo	ney to	start paying back some of the mon	ey I owed
18	Ω	Sto	p, Mr. Stoppiello.	
19	- Wh	at are	swag goods?	
20	Λ	Swa	g goods is like goods that was st	olen or some-
21	thing.			
22	Ω	Is	swag a street term, a street word	?
23	А	Yes	, a street term for like stolen m	erchandise;
	a pair of	boots	or something you buy it, sell	it

Q

25

These discussions concerning swag merchandise,

Stoppiello-direct

Mr. Stoppiello, did you discuss with Mr. Mauro who would do the actual selling?

MR. SCHACHER: Objection.

THE COURT: Objection sustained.

Q What discussions did you have?

THE COURT: Objection sustained.

MR. BERGMAN: May we have a sidebar, your Honor?

THE COURT: The jury may be excused.

(Jury excused.)

MR. BERGMAN: At the risk of assuming too much,
I assume the basis for your ruling is that it involves
another crime?

THE COURT: That's right.

The general intent to possess and pass counterfeit money may imply other or encompass other possible crimes but I am not going to let this case wander into every area.

MR. BERGMAN: May I make two suggestions?

MR. SCHACHER: May this be done outside the presence of the witness?

MR. BERGMAN: Fine with me.

THE COURT: Would you please show the witness out.

(Witness exits courtroom.)

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THE COURT: You know, we have got an obviously-
MR. SCHACHER: I appreciate the Court's position
but I do have to take these steps --

THE COURT: The man is obviously ill and could not possibly understand the discussions we are having and it wastes time but at your request I will do it.

Now, the same thing, Mr. Bergman. He does not fully understand the instructions. There is no question about it. So, if you ask a question that is "Yes or no," and you pause for ten seconds it is time for him to give a lot of gratuitous information.

"Did you have a discussion -- yes or no.
"What was it?"

Ask it right then and there and the same with the objections.

Some of it is material though not strictly responsive and I am not going to adhere to these technical objections. If it is in the case, I will let it in.

MR. SCHACHER: I am making my objections which
I hope are in the purview of the rules of evidence.

THE COURT: I know, I know.

There are a lot of objections, merely technical.

I realize he is not being responsive in a strict sense
because of saying yes or no he is giving me conversations

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and it is not responsive but it is pertinent --MR. SCHACHER: It is the narration --

THE COURT: I will rule on the objections. get paid by the year. If you want this case to take a month, I will do it and not try any others.

Now, Mr. Bergman, why do you want to talk about another crime?

MR. BERGMAN: It shows the organization of the conspiracy between them regarding the counterfeit money.

There was a definite relationship between Mr. Stoppiello and Mr. Mauro. Mr. Stoppiello owed a substantial sum to Mr. Mauro. He had to repay the money and Mauro offered him the opportunity to deal in illicit goods, stolen goods, jewelry --

THE COURT: I won't allow it. The conspiracy charge is solely as to money. It says nothing about stolen goods.

> MR. BERGMAN: I have cases upstairs --THE COURT: You try the one down here. I won't allow it.

You can go into their discussions of the indebtedness and other possibilities of repaying. That is in the case already but I won't allow conversations about

 specific crimes. It is not within the issues.

The charge here is that he conspired to possess and distribute counterfeit money.

Bring Mr. Stoppiello in.

(The witness resumed the witness stand.)

THE COURT: Seat the jury.

(The jury entered the jury box.)

(Continued on next page.)

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THE COURT: You may continue, Mr. Bergman.

DIRECT EXAMINATION

BY MR. BERGMAN: (cont)

Did there come a time in October of 1971, Mr. Stoppiello, when you had discussions with Mr. Mauro concern ing counterfeit money -- yes or no?

> A Yes.

Now, when in October were those discussions held?

The exact date I couldn't tell you but during that period, that area -- that period of time there were discussions.

> What were the discussions you had? Q

Well, --

What did he say to you and what did you say to Q him?

Every bill I sold I would get so much money and that he would apply most of it to the interest on the loan.

Like, on one occasion, he was supposed to take off \$150 from the principal but he said, "No, it comes off the interest, not the principal."

Q In these discussions that you had with him -this is with regard to counterfeit money -- did he ever show you counterfeit money or money that he said was counterfeit money?

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THE COURT: This is October, 1971, when you had the talk. Did he show you counterfeit money?

THE COURT: Where was that?

THE WITNESS: Yes.

THE WITNESS: I don't remember where. I don't remember if it was in my house or the car or where, but he did show me some counterfeit bills.

It might have been in the luncheonette where we went to have coffee with Leddy and so forth.

- Q Did you ever have discussions about the price of these counterfeit bills?
 - A We had discussions.
- Q What were those discussions you had about the price of the bills?
- A That particular bill, that was \$3.00 per bill, per \$10 bill --
- By the way, Mr. Stoppiello, on the loans or the monies that you owed to Mr. Mauro, did you personally keep any records of how much you owed him; how much you had to pay him each week, that sort of thing?
 - A No, I didn't. Because --
 - Q Yes or no?
 - No, I didn't, but Joe did.
 - MR. BERGMAN: I am sorry. I didn't hear that.

Stoppiello - direct

Would you read the answer back, please.
(Record read by reporter.)

Q Do you know what kind of records he kept, what they looked like?

A Well, it's hard -- I never really got a good look at them.

Q From what you saw, what did they look like?

A little paper and pencil and he would write down on there what I owed him and the date, like, what was principal and what was interest and what was this and things like that.

Q Was this a large pad, small slip of paper or both?

What was the form? What did they physically look like?

A He had both large pads, large pieces of paper and then he had some little small pieces of paper which he told me one time that was important papers or telephone numbers, things like that, which were in his wrist watch.

Now, during October of 1971, did you ever receive any counterfeit money from Mr. Mauro -- yes or no?

A In October?

Q Did he ever give you any counterfeit money during that month -- yes or no?

A I believe so.

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Q Do you recall how much?

A I know going into November -- definitely, because now we are coming into the season --

MR. SCHACHER: Objection.

THE COURT: Strike it out. It is not responsive.

We are talking about October, 1971. Do you recall whether you got any during that month?

THE WITNESS: He showed me some bills.

THE COURT: Did he give you any?

THE WITNESS: It is hard to really -- let me try to recollect.

THE COURT: What is your best recollection?

THE WITNESS: I don't want to give just any'

MR. SCHACHER: Objection.

answer --

THE COURT: Strike that, "I don't want to give just any answer."

First, think about it and then tell us what your best recollection is.

THE WITNESS: October -- I believe that by -toward the end of October or the last week or two of
October, is when I started getting the bills from Joe.
It was sometime in October. Gee, I wish -- the exact
week and date I don't remember because I didn't keep a

record.

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THE COURT: The question was whether you got billed any time during the month of October.

THE WITNESS: To the best of my recollection, your Honor, I believe I did receive some, but that's to the best of my recollection.

THE COURT: That is all we take.

Mr. Stoppiello, did you receive any counterfeit Q bills from Mr. Mauro in November of 1971?

> A Yes, we did, we did.

How many bills would you say you received from Q him?

It is hard to say. There was also different quantities, you know; different quantities of bills, 10's, 20's --

Stop.

Do you recall the price at which you sold the bills, regardless of how many you received?

The price was \$3.00 a bill unless the buyer wanted to buy \$5,000 -- no, unless it was \$10,000 or over.

If the buyer wanted to buy \$10,000 or over that was a different price, a lower price for them.

Had Joseph Mauro told you that?

Yes. He would give me the price. He was the

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only one I could get the price from.

Q Were you receiving counterfeit money from anyone else during that period of time, October to November -- you personally?

A No, I did not.

Q All right. O.K. That's all --

A No, I did not.

All right. About how much worth of counterfeit money had you sold during say October and November of 1971?

A Here is here we are coming to a spot --

Q I will withdraw the question.

Do you recall how much money, in real money, you got for selling counterfeit money in October and November of 1971?

MR. SCHACHER: Objection.

THE COURT: Overruled. I will allow it.

A It is difficult for me to say, Mr. Bergman, the exact amount of money because --

MR. SCHACHER: Objection.

THE COURT: It is not responsive.

Approximately.

THE WITNESS: Approximately?

THE COURT: Approximately how much you earned out of the sale of the counterfeit bills during the

MR. BERGMAN: No, the word "earned" was not

The question was how, much he received from

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used.

two months?

period?

purchasers of the bills.

\$3.00 for every \$10 bill.

How much did you receive all told for those

What makes it a little difficult -- I have to go back three years so please excuse me if I am keeping you --

Mr. Steppiello, stop.

Was it more than a thousand dollars in real cash that you got in those two months?

- No, I don't believe I earned a thousand dollars. A
- Less than \$200?
- No, it was more than that, but you see --(continued next page.)

2		Q	Now, I direct your attention to December 1, 1971.
3	Now,	on that	day did you receive your your veteran's check?
4	H.	ν	Yes, right. Right.
5		Q	And do you recall the sum of it?
6		Α	Pardon? I didn't
7			THE COURT: How much was it?
8		Q	How much was it?
9		A	Oh, \$539.
0		Q	Did you see Joseph Mauro on that day?
1		Λ	Yes, he came into the house that day.
2		Q	Where did you see Joseph Mauro on that day?
3		А	In the in the living room.
4		Q	You have to take your hand away from your mouth.
5		A	Yes, he came into the house, into the living
6	room,	you kn	ow, and I
7		2	And did you have any discussion with him at that
8	time?		
			Well, not too much on that day, because my wife

A Well, not too much on that day, because my wife and I --

20

MR. SCHACHER: Objection, your Honor.

21

THE COURT: Strike out "because my wife and I."

23

Did you have a discussion with him that day --

24

Yes or no.

Q

25

A Yes, we had --

Q Yes or no.

A (Continuing) -- a discussion.

Did he give you anything on that day?

A Yes, he gave me ten --

Q Yes of no.

A Yes, he did.

Q All right, what discussion did you have and what dad he give you?

with new bills, and with more -- more than two serial numbers.
They had senathing like 10 or 20 serial numbers. And that
the quality of the new bills were -- was very much better
than the old ones, see. However, he didn't want to put the
new bills on the street until he got rid of -- he still had
something like I think \$80,000 of the old junk, the old stuff,
which were hard to get rid of because they were such bad
condition.

MR. SCHACHER: Objection, your Honor.

THE COURT: Did he say this?

THE WITNESS: He told me.

THE COURT: All right, I'll allow it.

THE WITNESS: Because the old ones, he wanted to get rid of the old ones, and then he would put the new ones, we would get the new ones, because the new

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24 25 ones were beautiful, they had everything, the new numbers and the print, the color, the texture, everything —

They were very, very, very good.

But the thing is he -- he still was stuck with about \$90,000 of the old ones.

THE COURT: All right, go ahead, Mr. Bergman.
Next question.

Q On that occasion, December 1, 1971, did he give you any counterfeit bills?

A He gave me 10 -- 10 -- 10 of them, of the new ones, the good ones.

Q On that day did you enter the hospital, the VA Hospital?

A Yes. Yes.

o Did there come a time on December 10th, 1971 while you were in the hospital that you met -- met a man named Mickey, known to you at that time as Mickey?

A Well, I met Mickey through --

Q Yes or no.

A Yes, I did.

Q And who introduced you to him.

A This fellow, a friend I know, Sal is his name.

Q Is this the same Sal whom you had used to borrow money from Joseph Mauro?

1	4		
2		A	Yes.
3		Q	Yes or no.
4		A	Yes, it was.
5		Q.	Now, did you meet
6		A	Excuse me, but I thought about something.
7	,	Q	Did you meet Mickey at the hospital?
8		A	Yes, I met him at the at the hospital.
9		Q	And did Sal introduce him to you?
10		A	Yes, Sally, he introduced me to to Mickey,
11	and		
12		0	Yes or no?
13		A	Yes.
14		Q	Now, what did Sal say to you when he introduced
15	Mickey	to you	a?
16			MR. SCHACHER: Objection, your Honor.
17			THE COURT: Now, normally what this witness
18		would	say to Sal or anyone else wouldn't be binding
19		on th	is defendant, because normally one is responsible
20		for o	nly what he does or says.
21			However, this is one of the exceptions. The
22		Gover	nment charges that the witness and the defendant
23		enter	ed into a conspiracy to possess and to sell
24		count	erfeit money.

Now, what the charge in Count Four of Indictment

.

858 is is an unlawful agreement to possess and sell counterfeit money.

Now, the Government must establish beyond a reasonable doubt that the conspiracy alleged in the indictment existed, that it existed at or about the time alleged in the indictment — and the Government alleges that the conspiracy existed on or about in between October 1971 and January 4, 1972 — and that the conversations — Well, first that the conspiracy existed between Mr. Stoppiello and Mr. Mauro, because it says so in the indictment — they have to prove that beyond a reasonable doubt — and that the conversations that Mr. Stoppiello had with the gentleman I referred to were during the term of the conspiracy and in furtherance of the objectives of the conspiracy.

In other words, the conversations were about possessing or selling, or, if he actually did try to sell or negotiate the sale of counterfeit money, then it's chargeable against this defendant.

yond a reasonable doubt, then you must disregard it.

In other words, the Government must prove beyond a reasonable doubt that the conspiracy between the witness and the defendant existed, that it was for the purpose

Stoppiello

of possessing, concealing, distributing and selling
money; that the conversation that this witness had
with third parties was during the term of the conspiracy,
and then that it was in furtherance of the objectives
of the conspiracy.

In other words, the law says that once there are partners in a criminal venture, and the Government establishes it beyond a reasonable doubt, then just like in a legitimate correctal venture, what one partner does in the partnership binds the other, if it's for the partnership and during the time of the partnership.

It's as if you and myself or one of you and myself were in the grocery husiness, and you were the man behind the counter, and I went out and bought a thousand cases of beans, and you didn't even know about it, and you didn't even want me to buy the beans; nevertheless, the partnership is bound by it because in a partnership each partner is the agent for every other partner and binds every other partner.

So, in a legitimate venture you would be bound by that purchase, the partnership would have to pay for that thousand cases of beans because I acted as agent for the partnership.

Stoppiello

so, in a criminal venture, criminal partnership, each conspirator is bound by the acts and declarations of every other conspirator made during the course of the conspiracy and in furtherance of the objective of the conspiracy, even though the other conspirators are not present, even though they know nothing about it.

So for that limited purpose I'll allow it.
All right, you may proceed now.

Q At the time that Sal introduced Mickey to you what did he say? Just at the time he introduced you to him.

A First, naturally, he asked -- he asked me how I was feeling, you know, and so on and so forth, and then he -- then we got into business.

- Q Did he introduce Mickey to you?
- A Yes, he introduced me --
- Q What did he say when he introduced Mickey to you?
- A Well, as I said, first the formalities, and he introduced us, and he asked me how I felt, how I was doing, you know, and to -- to this fellow, and so forth. In other words, you know, he -- the amenities. Friendly, you know.

 And then we got down to business.

(Continued on next page.)

Stoppiello-direct

Q All right, stop. Stop.

THE COURT: I'd like to continue my charge and charge you that this evidence is admissible solely on the conspiracy count, which is Count Four of indictment 358. So keep that in mind.

It has nothing to do with the other counts.

- At the time you went into the hospital, Mr. Stoppiello, how many counterfeit bills did you have with you?
 - A Ten.

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- O And where had you received them from?
- A From Joe.
- Now, on December 10th did you sell any counterfeit bills --
 - A Yes.
- (Continuing) -- to the person named Mickey? Yes or no.
 - A Yes.
 - o Yes or no.
 - A Yes, I did.
 - 0 How many did you sell to him?
 - A Eight.
 - Q And what was the price of each bill?
 - A Eight. It was \$3 a bill. It was \$24.
 - Q Did you have any discussion with him about

1	2 Stoppiello-direct
2	future purchases by him from you?
3	A Yes, we did, we he
4	Q Yes or no?
5	A Yes, we did.
6	Q Now, Mickey left that day correct? He left
7	the hospital that day?
8	A Well, that day
9	Q Yes or no.
10	A He he left with Sal. Both of them left, yes.
11	Q Following Mickey's departure from the hospital
12	did you have any discussions with Joe Mauro concerning Mickey
13	A Of course. I had to. He wanted to make a big
14	buy, and I had to call Joe and find out if we could get that
15	amount, and when, and so forth.
16	Q What did you say to Joe?
17	A I told him I sold eight eight of the bills,
18	and that the fellow, he liked them very much, and that he
19	he was going to make a return visit, he was going to come
20	back again.
21	And so then Joe and I discussed different terms of
22	depending upon how much they would want to buy, and so forth.
23	Q What did you discuss in that regard?
24	A We were we were discussing the prices of the
25	bills, of of these of the new bills, depending upon

1	3 Stoppiello-direct
2	the quantity they would want.
3	Q And what would be the price for what quantity
4	that you were
5	A Well, that's what we were coming to, see, and we-
6	we finally Well, then we had to wait till Mickey came back.
7	Q Before Mickey came back the second time
8	λ Yes.
9	Q (Continuing) what did Joe Mauro tell you about
10	the price and the quantity, and the minimum quantity, if
11	such discussions were had between you? What specifically did
12	he say about it?
13	MR. SCHACHER: Your Honor, I'm going to object
14	to leading in the questioning.
15	THE COURT: Overruled. I'll allow it.
16	MR. SCHACHER: I respectfully except, sir.
17	THE WITNESS: Do I answer it?
18	THE COURT: Yes, you may answer it.
19	THE WITNESS: If a certain amount would be a
20	lower price. In other words, every amount every
21	it would have like steps, steps.
22	THE COURT: Well, a certain amount, did Mr. Mauro
23	say at what amount would be a certain price?
24	THE WITNESS: Right.
_	THE COURT What amount?

Stoppiello-direct

THE WITNESS: Well, as it came out, Mickey wanted \$5,000, and that amount I had to collect \$1250 for the \$5,000.

THE COURT: All right, go ahead.

THE WITNESS: Now, does that answer the thing, Mr. Bergman?

MR. BERGMAN: The jury will have to be the Judge of that.

Your Honor, I'd like to mark these eight -- eight bills.

THE COURT: Government's Exhibit what?

THE CLERK: Government's Exhibit 11 for Identification.

THE WITNESS: They are very good, aren't they?

THE COURT: No, don't say anything. There's

no question.

By the way, Mr. Stoppiello, do you remember when you were released from the hospital, what date? Yes or no.

A About the 17th, or something like that. 17th, 18th, something -- some time like that.

THE COURT: Of December?

THE WITNESS: December, the 1/th or 18th of December.

THE COURT: Go ahead.

-	/2
1	5 Stoppiello-direct
2	Q Following that did you meet a second time with
3	Mickey?
4	A Yes. Yes.
5	Q Did you have a discussion with him at that time?
6	A December 30, to be exact. It was New Year's
7	Eve day.
8	Q And did you have a discussion with him at that
9	time?
10	A Yes, we we made
11	Q Yes or no.
12	A Yes, we did.
13	Q And did the discussion concern counterfeit money
14	Yes or no.
15	A Yes. Yes, of course.
16	Q Now, did you give him any counterfeit money on
17	that occasion?
18	A Yes, he wanted he wanted a couple more, and
19	I had two, and I I sold him the other two, the last two
20	of the ten. Because, you remember, I had ten of them, so
21	there was eight, and then I had two more, and I sold him the
22	other two from the ten. Yes.
23	MR. BERGMAN: Can we have this c n we have
24	these two purported \$10 bills marked for Identifica-
25	tion?

,	6 Stoppiello-direct
2	THE CLERK: So marked as Government:'s Exhibit 12
3	for Identification.
4	Q Now, what discussions did you have with Mickey
5	on December 30th?
6	A Well, we discussed
7	Q What did you tell him and what did he tell you?
8	A All right, we discussed the he came out
9	THE COURT: Excuse me, what date is in the ques-
10	tion?
11	THE WITNESS: December December 30.
12	THE COURT: May I have it, Mr. Lewis.
13	(Last question read.)
14	THE COURT: Was it December 30th or New Year's
15	Eve?
16	THE WITNESS: Yes, New Year's Eve day. This
17	was this was December 30th. I guess it was about
18	2-3 in the afternoon, or something like that. In the
19	afternoon of December 30th.
	THE COURT: All right, go ahead.
20	THE WITNESS: Of New Year's Eve, in other words,
21	but that afternoon.
22	THE COURT: Well, isn't New Year's Eve the evening
23	of December 31st?
24	THE WITNESS: No, no, no.
25	

Stoppiello-direct

THE COURT: No?

THE WITNE' : No, it was December 30th.

THE COURT: All right, go ahead.

THE WITNESS: Well, New Year's Eve was the 31st?

I don't recall. But it was December 30th that I met

Mickey.

THE COURT: Was that at 7:30 at night?

THE WITNESS: No, it wasn't 7:30. It was in the afternoon.

THE COURT: 2:30? All right, go ahead.

THE WITNESS: Two in the afternoon.

Q What discussions did you have with Mickey concerning counterfeit money on that occasion?

A Well, we discussed the -- first of all, he -- he liked -- he said his people liked the bills very much, and they wanted to make a larger buy, and -- and he told me how much they wanted. And --

(Continued on next page.)

1	Stoppiello -	direct
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DIRECT EXAMINATION

BY MR. BERGMAN:

- And I already knew because Joe had told me,
- What did he say was the amount that he wanted to purchase for his people?
- A see wanted \$5,000 in -- in counterfeit bills.

 And I told him that it would cost him twelve fifty, see? The \$250 was supposed to go to pay for my -- my interest, my -- you know, my bill, and Joe would get the others now.
- Subsequent to your conversation with Mickey, did you have any further discussions with Joseph Mauro?
- A Yes. Well, I call Joe up and I told him we made -- everything was set up for -- for the Tuesday, I think it was Tuesday -- Tuesday of July -- of January 4th, that Mickey would be there with the money, with the money and -- and the price was \$1,250 for the \$5,000 of the counterfeit bills.
 - Now, who was to get \$1,250?
- A Well, I was supposed to get it, and Sal, and then in turn turn it over to Joe.
- The entire amount or would you keep any for yourself?

Stoppiello - direct

A No, no, you turn it over to Joe first and then he gives you what he -- you know, what he thinks he wants to give you.

Was Joe to apply any of that money to the debt that you owed?

A Yes, he was supposed to apply, iI think now, \$150 or \$200 -- you see, that was --

O Do you recall how much he was to apply to your debt; yes or no?

THE COURT: Did you talk about this with Mr. Mauro?

THE WITNESS: Yes. He said he would take off, you know, he would -- he would take off a good -- a sum like out of the \$250, he probably would take off like about \$200 or so, you know, from my -- from my bill.

THE COURT: Credit you --

THE WITNESS: And I would make myself \$50,

maybe, you know. he said, well he -- he more or less

like -- he didn't really commit himself too much as

to the exact figure I would get. More or less it

depended on how he -- how he felt that particular day.

BY MR. BERGMAJ:

All right. How much money did you owe Mr. Mauro

1	3 Stoppiello - direct
2	at that time, principal plus his interest payments?
3	A About twenty-five, \$2,600, something like
4	that. But that's not counting my wife's.
5	Q No, forgetting that.
6	Now, did there come a time when you met
7	Joseph Mauro on January 4th, 1972?
8	A Right.
9	Q And where did you meet him?
10	A We all, me, Joe
11	Q Where did you meet him?
12	A Anton's Luncheonette.
13	Q At what time did you meet him?
14	A Oh, it was about 10:00 o'clock in the morning
15	on on January, I think it was the 14th. About 10:00
16	o'clock in the morning.
17	was anyone else present at that meeting?
18	A Lenny, Joe and myself.
19	Q Lenny who?
20	A Lenny Bilts Bilts Bilts.
21	Who was he?
22	A lie's a friend of Joe's.
23	Q Did you have any discussions at that time with
24	Joseph Mauro and Lenny Bilts?
5	A Yes we we were we did discuss we were

1	4 Stoppiello - direct
2	waiting for for Mickey to come, and however he had
3	Q Did you have any discussions?
4	A Yes, there was a discussion that, well, they
5	were a little leery of this fellow Mickey and and Sal.
6	And there was a moment, maybe we ought to put in like fake
7	paper, you know, and give them give them fake paper for
8	money, and then if they were to if they were to if
9	they were the cops, you know, then they could prove that
10	it wasn't
11	Q Prior to January 4th, had you told Joseph Mauro
12	that the person who had introduced you to Mickey was Sal?
13	A Yes, yes.
14	Q Did there come a time when you made a telephone
15	call on that morning?
16	A The morning of the 4th?
17	Q Yes. Do you recall making
18	A Yes, I called yes, Mickey and Joe both.
19	Called Mickey and he said he was going to be there 11:00
20	o'clock that morning, then I called Joe and tell him told
21	him that Mickey was coming down 11:00 o'clock.
22	Q Was that prior to the 4th that you had set up
23	the 11th 11:00 o'clock on January 4th for the meeting
24	time?

Yes. This was set up on the 13th of December -

A

1	5 Stoppiello - direct	
2	we had set up for the 14th of January at 11:00 o'clock that	
3	morning.	
5	Q Was the appointment kept by Mickey at 11:00	
	o'clock that morning?	
7	A No, he I he didn't he didn't come	
	right away so I went out and I called him up and I got him	
8	on the phone.	
	He said something turned up and they they	
10	would be a little late but that they would they would	
11	he would be down there for sure. He'd surely be there.	
12	Q What time did he say he'd be there?	
13	A About about 2:00 o'clock.	
	And where did he say he would meet you?	
15	A On Bay Parkway and 71st Street near at the	+
16	at Anton's Luncheonette over there.	
17	2 Did you inform Joseph Mauro of your conversa-	
19	tion with Mickey?	
	A Yes, of course. I had to. Had to.	
20	Q What did you tell him?	
21	A I told him that Mickey was going to was goi	
22	to buy \$5,000. He wanted \$5,000 worth of bills, and that he	
	was willing to pay \$1,250 for the \$5,000.	
24	And did you receive any instructions from	

Joseph Mauro at that time?

1 Stoppiello - direct 2 Well, he said, "All right," but that he wouldn't 3 pass them, that we would have to pass them. 4 When he said "we," who was he referring to? 5 Me and Sal. But he said Sal brought the guy. 6 He said Sal -- he said it's Sal's friends, you know --7 Now, at that time, did you have in your 8 possession the \$5,000 worth of counterfeit bills? 9 No. Excuse me, no I didn't have it in my 10 possession, not yet. 11 When did you receive it? 12 Well, when I went out, and the second time and 13 called up lickey and we had the definite appointment for 14 2:00 o'clock that day, then I came back and I told Joe, you 15 know, and Lenny, that Mickey would be there 2:00 o'clock, 16 definitely be there at 2:00 o'clock, and he was -- he was 17 coming -- the car he had was a blue Cadillac, see? Then 18 I called Sal, I said, "Sal, your friend Mickey is coming 19 at 2:00 o'clock so you'd better get over here, too." 20 So Sal came over --21 Up to that point --22 All right. 23 (Continuing) -- stop. 24 Up to that point, had you seen the \$5,000 worth

of counterfeit bills?

1	7 Stoppiello - direct
2	A I was coming to that, see. I was coming to
3	that.
4	Q Yes or no, answer my question, Mr. Stoppiello.
5	Had you seen the \$5,000 worth of counterfeit
6	bills?
7	Λ Not yet.
8	when did you first see them?
9	A Well, when I went back to the luncheonette
10	there and I told I informed Joe about Mickey was coming
11	at 2:00 o'clock
12	Q You have already testified to that.
13	A (Continuing) and so forth and and the
14	other fellow Sal would be coming over and everything. So
15	I said, "Give me the money" and then I said, "Give me
16	the money so we'll be able to pass them on."
17	So he told me to go in his car on the back seat.
18	When you say "he," who are you referring to?
19	Λ Joe.
20	Q Was Lenny Bilts present at that time?
21	A Yes, Lenny was there, too. Yes. That's
22	that's when he said about putting the the paper using
23	newspapers in order to to test out whether they were
24	policemen or if it was a genuine buy, you know.
25	u bid you go to the car?

1	8 Stoppiello - direct
2	A But for some reason or other
3	Q Stop, I think you are going beyond.
4	A No? All right.
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,	and the sac to his car, which was a
	green Mustang, you know.
8	Do you remember the year of the car, Mr. Stoppiello
9	A Oh, I think it was a '71 or '72. I don't recall,
10	1 le a '72 or '71 Mustang. Something like one of them
11	one of them cars. It was
12	Q Was it locked?
13	A It was all green. It was a light paint
14	it was a light green Mustang.
15	Q Was it locked?
16	A Gee, I don't recall if it was locked or not.
17	I don't recall if it was locked.
18	Did you receive any keys from Mr. Mauro?
19	A I think he gave me the keys anyway. Give me
20	the keys. I went over. I don't recall if it was locked
21	or not but anyway I I opened the door
22	Q Now, stop.
23	Had Mr. Mauro told you where the money was?
24	A Yes, he said
25	Q What did he tell you before you want to the

1	9 Stoppiello - direct
2	car as to where the money was?
3	A On the back seat in in between the magazine
4	in a brown paper bag. So I did, I went out to the car and
5	I got
6	Q Did you look in the back seat?
7	A I looked in the back seat and there was the
8	magazines with the paper bag.
9	Q And what did you do then?
10	A I looked in, I saw the money, and I saw
11	I saw the money, you know.
12	Q And what did you then do?
13	A There was some there was some very bad, you
14	know.
15	Q You looked at them?
16	A I looked at some of them. They looked very
17	bad. I said, "Would you"
18	Q Did you take them anywhere?
19	A Yes, I took them and I so but I
20	Q Where did you take them?
21	A well, Joe had suggested taking them into my
22	house but I said no, I don't I took them down, I put them
23	down the basement of the apartment house. There is a big
24	see, it's a big 66-family apartment house, you know.
25	

k fols.

1	Direct - Stoppiello
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3	Q And did you leave them there?
3	A I brought them down the basement and I put
4	them in a spot down the basement there. Yes, and I left
5	them there and waiting awaiting Mickey's arrival.
6	Q Did there come a time
7	A However, for some reason or other
8	Q No, no, stop, stop.
9	A All right.
10	Q Now, where was Sally at this time, when you pu
11	the money into the basement of your apartment?
12	A Sally had just about come over that time.
13	Q How far is your apartment house from Anton's
14	Luncheonette?
15	A Across the street. Right
16	Q And how far away was the meeting place with
17	Mickey from Anton's Luncheonette?
18	A It would be anywhere he was going to pass
19	by
20	Q No, no, how far, you know in distance? Was
21	it two blocks, three blocks, a half a block?
22	A Oh, like across the street. Like, see Bay

Parkway comes this way, 70th Street comes this way, see?

Now this way -- Bay Parkway turns off there at West 11th into

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Avenue O.

1 10 Direct-Stoppiello 2 and the car --3 MR. SCHACHER: I'm going to object to all this, 4 your Honor. 5 THE COURT: Overruled. THE WITHESS: The car was parked over here 6 7 like where that table is. The first table or the second table? 0 8 No, I think where the second table is. 9 7 Where Mr. Schacher and Mr. Mauro are seated? 10 Yes. The Car was parked over here. 11 THE COURT: That's about 15, 20 feet, 12 THE WITNESS: And I was here with the umbrella 13 like this, you know, and I seen them making the 14 transaction, see. 15 All right, you can sit down. 16 Now, I started to walk --17 Sit down. 18 And all of a -- I started to walk toward the 19 car, see, in the meantime I thought --20 Not what you thought. 21 A I had gone home. 22 You can't say what you thought. 0 23 Oh. Well, how can I out it? All right. 24 Was there subsequently an arrest, were some 0 25

1	Direct-Stoppiello
2	people arrestd?
3	A Yes, all all of a sudden a lot of sirens
4	and cars started coming they came from from every
5	place, cars, sirens, and guns, everything.
6	Q And what did you do when you when you
7	heard the sirens and saw the guns?
8	A Me, I closed the umbrella and I ran in the
9	house.
10	Q Did there come a time later that day when you
11	were arrested, Mr. Stoppiello?
12	A Yes, well, I was peeking through the blinds
13	to see what was going on because
14	Q Yes or no. Did there come a time when you
15	were arrested that afternoon?
16	A Yes, that that
17	Q Yes or no?
18	A that occurred at two-thirty. They arrested
19	me at six o'clock. About six o'clock they came back for
20	ne.
21	Q Were those agents of the Secret Service?
22	A From the Secret Service, right.
23	MR. SCHACHER: May we have a brief recess
24	at this point, your Honor?
25	MUP COURT. We can take our lunch at this poin

Stoppiello - direct

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DIRECT EXAMINATION

BY MR. BERGMAN: (cont)

Mr. Stoppiello, I believe we left off after you had been arrested by the Secret Service agents on January 4, 1972?

Were you thereafter, Mr. Stoppiello, indicted for the crimes of possession and transferring counterfeit money?

Well, first --

Yes or no? Q

We weren't arrested until --

Q Mr. Stoppiello --

(cont) Four hours later.

Were you thereafter personally indicted for the crimes of possession and transferring counterfeit money; yes or no?

Yes, I was, I was.

Thereafter, didyou plead guilty to a charge of having passed two counterfeit bills on January 30 -- on December 30, 1971?

> Yes, sir, I did. A

Was the date of that plea April 4, 1971? Q

Yes. I pleaded guilty to the two bills. A

Now, was it before a Judge of this Court? Q

Yes, it was Judge -- I am trying to remember his A

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Mr. Whitaker sent over to the Bureau of Customs.

What did that confidential report relate to?

Well, when they impound, like a car or so. after they searched it all, they, the Secret Service , they send over a report to the Bureau of Customs of what was seized and what was done, etcetera, and in this report, my name, my name and -- and address was in this report that went from the Secret Service to the Bureau of Customs --

> Q Now, prior --

(continuing) -- and --

Mr. Stoppiello, directing your attention to March of 1972, had you had occasion to have a conversation with John Viggiano of the Secret Service relating to the contents of Mr. Mauro's car?

Yes, I did.

Q What did you tell him on that occasion? MR. SCHACHER: Objection, your Honor.

THE COURT: Objection sustained.

THE WITNESS: Sustained, I can answer?

THE COURT: No, don't answer.

THE WITNESS: Oh.

BY MR. BERGMAN:

Mr. Stoppiello, did Mr. Mauro, if you know, keep any counterfeit money in the case here in his car?

A Yes, I have seen it on different occasions.

A 17.....

Where did he keep it, if you know?

A One place I knew was in his steering column of the car.

Q All right.

Directing your attention to the conversation that you had with Mr. Mauro on July 12th, after he told you that he saw your name on a paper, did you state anything to him with regard to your paying the money back to him that you were supposed to owe him?

A I told him I couldn't, I couldn't, I couldn't pay any more because -- if I was -- if I was going to take the bust for him, everyone -- the loan was squashed, and since he didn't want to squash the loan, he didn't, he didn't he wouldn't give an inch.

Q What did he say to you?

A See, and I said I wouldn't make any more payments.

Q What did he say to you then?

A Well, one, he said, he said, well, either way, he said, I read -- not only the set-up, me and my lawyer both read the report and either way you are dead.

Q Either way, what was the other way, what was the other way?

1	MICHAEL REILLY, called as a witness on
2	behalf of the government, having been duly sworn by
3	the Clerk of the Court, testified as follows:
4	DIRECT EXAMINATION
5	BY MR. BERGMAN:
6	Q Mr. Reilly, do you have a title?
7	A Yes, sir, I am a Special Agent United States
8	Secret Service.
9	Q How long have you been with the United States
10	Secret Service?
11	A Approximately four and a half years.
12	Q Basically what are your responsibilities and
13	what are the duties of a Special Agent?
14	A The main duty is protection of the President of
15	the United States against assassination, following that we
16	also have criminal duties.
17	Q What are those?
18	A Among those are investigating under the law
19	pertaining to counterfeit money, United States currency.
20	Q In your capacity as a Special Agent, have you
21	ever acted in an undercover capacity?
22	A Yes, I have, sir.
23	Q Will you describe briefly the functions of an
24	undercover agent?
25	A An undercover agent is an agent, but when he

Reilly-direct

2	deals with an individual who is possibly a criminal, an
3	alleged criminal, he doesn't tell that person he is an agent,
4	he acts not officially, not telling him he is an agent.
5	Q Prior to December of 1971, how many times would

- you estimate you had acted in such an undercover capacity?
 - Between five and ten times.
- Directing your attention to December 3, 1971, did you have occasion in that capacity to meet with a man by the name of Sal Seminaro?
 - Yes, I did, sir.

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- Where was that meeting?
- At the United States Secret Service Field Office, 90 Church Street.
- Did you have a conversation with him at that time?
 - Yes, sir, I did.
 - What did he tell you? Q

MR. SCHACHER: Objection, your Honor.

THE COURT: Objection sustained.

- Did he give you anything at that time? Q
- Yes, sir, he did.
- What did he give you?
- He gave me three counterfeit \$10 bills.
 - MR. BERGMAN: Will you bear with me for just a

Reilly-direct

moment, your Honor.

May we have this marked, please.

THE CLERE: Three purported \$10 bills so marked as government's exhibit 23 for identification.

(So marked.)

BY MR. BERGMAN:

Q I show you government's exhibit 23 for identification, three purported \$10 bills.

Can you identify government's exhibit 23, Mr.

Reilly?

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- A Yes, sir, I can.
- Q What are they?
- A Three counterfeit \$10 bills.
- Q When did you receive them?
 - A On that date, December 3, 1971.
 - O Whom did you receive them from?
- 18 A Mr. Sal Seminaro.
 - Now, you testified as to what an undercover agent is, what is an informant in terms of a Secret Service investigation?
 - A An informant is an individual that comes to the federal government or other agencies supplying them with information relating to crimes or alleged crimes.
 - Q Was Sal Seminaro an informant as you describe?

1		Reilly-direct 546
2	A	Yes, he was.
3	Q	Did you receive certain information from him
4	on December 3r	d?
5	A	That is correct.
6	Q	Thereafter did you meet with Mr. Seminaro again?
7	A	Yes, I did.
8	Q	When was that?
9	A	Pardon me.
10	Q	When was that?
11	A	That was on December 10, 1971.
12	Q	Where did you meet him?
13	A	Downtown Brooklyn, New York.
14	Q	Did you have a conversation with him at that
15	time?	
16	A	Yes, sir, I did.
17	Q	Following that conversation, where did you go,
18	if anywhere?	
19	A	Went to the Brooklyn Veterans Administration
20	Hospital near	the Belt Parkway in Brooklyn.
21	Q	What did you do when you arrived there?
22	A	Went upstairs and met with
23	. Q	Were you accompanied by anybody at that time?

Was anybody else present when you went upstairs?

Yes, Mr. Seminaro.

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THE COURT: Here again you will recall that I charged that these conversations would not ordinarily be admissable, and they are admissable only with relation to the fourth charge in indictment 72CR858, which charges a conspiracy, and they are chargeable, introducible, admissable against this defendant only if you find that Louis Stoppiello entered into a conspiracy with the defendant Joseph Mauro; And that that conspiracy was in or about October

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1, 19 -- from October 1, 1971 to January 4, 1972; And if the government proves that the conspiracy

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was entered into for the purpose of possessing and concealing and dealing in and selling counterfeit \$10

United States Federal Reserve Notes, and the government must prove all of that beyond a reasonable doubt, then they would be admissable against this defendant;

That is if you found that this defendant had entered into the conspiracy with Louis Stoppiello and that these conversations concerned counterfeit money or that the transaction concerned counterfeit money, and if it were during the term of the conspiracy and in furtherance of the objectives of the conspiracy;

Then it may be charged against this defendant, otherwise just disregard it.

If you remember, I analogized it to a legitimate partnership in a grocery store business.

I think that is enough reference to you, I think that recalls it to you.

All right.

MR. BERGMAN: Thank you, your Honor.

(Continued on next page.)

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BY MR.	BERGMAN:
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- Did Sal introduce you to Mr. Stoppiello? 0
- A Yes, he did.
 - What did he say in that introduction?
 - He told Mr. Stoppiello I was a friend of his named Mickey.
 - What further did he say, if anything, at that Q time?
 - He said that I might be interested in buying some counterfeit bills, \$10 bills, that is what he said.
 - Did you have a conversation with Mr. Stoppiello thereafter?
 - Yes, I did. A
 - What was that conversation that you had?
 - He told me he had a number of \$10 bills, counterfeit bills, and wanted to know if I was interested in buying them.
 - What did you tell him?
 - I told him I wanted to see them first before I made a decision.
 - What thereafter happened? Q
 - He showed me a number of counterfeit bills, A \$10 bills.
 - Do you remember how many he showed you? Q

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A There were eight.

Q And was there any discussion about those bills?

A He told me that he would sell them for three dollars apiece; in other words, if I wanted to buy eight bills it would cost me \$24.

Q Was there any discussion about quality?

A He said that in his own mind they were good quality bills and the reason why he thought so was because a friend of his by the name of Joe had recently passed thirteen of these bills successfully when he was on a recent hunting trip, and he said he had no problem passing them.

- Q Now, did you purchase the bills at that time?
- A Yes, that afternoon.
- Q I show you Government's Exhibit 11 for identification, Agent Reilly.

Would you look at the exhibit and tell the jury whether or not you can identify them?

- A Yes, I can.
- Q What are they?
- A Those are the counterfeit bills I purchased from Stoppiello that day.
- Now, if I might digress for a moment, Agent Reilly, Government's Exhibit 23, which previously identified the three bills, how was it that you were able to make the

3	1	Reilly-direct
	2	identification that you did.
	3	A Well, I marked them with my initials and the
	4	date
	5	Q Will you hold up Government's Exhibit 23 and
	6	show the jury where the date is?
	7.	A I put my initials and the date in the corner
	8	here (indicating).
	9	Q Where did you place your initials on them with
	10	regard to Government's Exhibit 23?
	11	A 23 is the one that Stoppiello or rather
	12	Seminaro gave when he came into the office, and when I got
	13	those I put my initials on them right away in the office.
	14	Q And the eight bills, Government's Exhibit 11?
	15	A I put my initials on them after I left
	16	Mr. Stoppiello.
	17	MR. BERGMAN: At this time, your Honor, I would
	18	introduce into evidence Government's Exhibits 23 and
	19	11.
	20	THE COURT: Any objection, Mr. Schacher?
	21	MR. SCHACHER: Yes, you Honor.
	22	THE COURT: 23 is the three bills?
	23	MR. BERGMAN: Yes, and 11 are the eight bills.
	23	MR. BERGMAN: Yes, and Il are the eight bills

d when I got the office. s Exhibit 11? I left Honor, I would khibits 23 and schacher? Ls? he eight bills. THE COURT: The jury may be excused. Do you want to argue it? A61

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MR. SCHACHER: Yes, sir.

THE COURT: The jury may be excused.

(At 4:30 o'clock p.m. the jury left the courtroom.)

MR. SCHACHER: Your Honor, I don't think a proper foundation has been laid for the introduction of these counterfeit bills.

THE COURT: Well, first let's take the three bills.

What is the relevancy of the three bills to the issues in this case?

MR. BERGMAN: The relevancy is to as far as the numbering on the bills, your Honor, the serial numbers of these three bills coincide with some of the serial numbers on the bills that were received from Stoppiello, for whatever it is worth, and I think the jury is entitled to draw certain inferences.

THE COURT: You think that that might point to the business of this conspiracy?

MR. BERGMAN: At least bring it further back in time to the 3rd of December.

THE COURT: Frankly, it is of doubtful validity. I mean the argument.

MR. BERGMAN: I will withdraw it if your Honor

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has reservations.

THE COURT: I don't see that it follows.

Sustained as to the three bills.

What is your argument that you make as to the eight?

MR. SCHACHER: As to what?

THE COURT: As to the eight bills, Exhibit 11.

MR. SCHACHER: 11, it is my contention that there is no conspiracy shown here whatsoever, that in any way connects my client with this situation, sir.

THE COURT: I think that is a fact question for the jury.

I will overrule the objection.

MR. SCHACHER: And I also don't think that there is a proper foundation which has been laid for the introduction of those bills, sir.

THE COURT: They may be marked.

THE CLERK: Government's Exhibit 11 now received in evidence.

THE COURT: The three hills are one exhibit

MR. BERGMAN: The three bills are 23.

THE COURT: The three bills are 23?

MR. BERGMAN: Yes, and the eight bills are 11.

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THE COURT: All right.

Seat the jury.

(At 4:35 o'clock p.m. the jury took its place in the jury box.)

as to the offer, the introduction of the three bills into evidence, which is Exhibit 23 for identification, and has directed that Exhibit 11, which consists of the eight bills be marked.

MR. BERGMAN: Your Honor, while I am uestioning the witness, may I pass them to the jury?

THE COURT: Yes.

(Mr. Bergman then gave the exhibit to the forelady.)

BY MR. BERGMAN:

- Now, at the time that you received or purchased from Mr. Stoppiel o these eight counterfeit bills, did you have any discussion with him regarding future purchases by you of counterfeit money?
 - A Yes, we did, we had a discussion.
 - Q What was that discussion?
- A He told me he would be able to get me the same type of bill, counterfeit \$10 bill in rather large quantity.
 - Q What quantity was mentioned?

A He spoke about a figure of \$10,000 worth and I believe he also spoke about a figure of \$5,000 worth.

Q When you say \$10,000 worth, you are talking about the face amount of the counterfeit money?

THE WITNESS: Yes, sir, the counterfeit money itself.

THE COURT: You are not talking about the cash consideration?

THE WITNESS: That is correct.
THE COURT: All right.

BY MR. BERGMAN:

Q Was there any discussion at that time as to the price you would have to pay for those quantities of counterfeit money?

A I believe at that time he indicated that he would have to get back to the individual he received the bills from to get a figure. He wasn't, he didn't give me the impression that he was definite, that he could --

MR. SCHACHER: I object to the words -THE COURT: Strike out "He didn't give me the
impression."

or whether that was the impression you got?

THE WITNESS: He said he would have to get back,

get back to his man, and I said I would have to show

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THE COURT: All right.

BY MR. BERGMAN:

- Did he mention who his man was? 0
- Just the first name. A

the bills to my people.

- What was the fist name?
- Joe.
- Did you make any arrangements at that time for Q future contact between the two of you?
 - That is correct. A
 - What arrangements did you make?
- He gave me his telephone number or the telephone number of the hospital.
- And did you give him any telephone number at that time?
- I don't believe I gave him a number at that time, no.
 - Now, following that meeting, did you leave the 0
 - "es, I did.
 - Whom did you leave with? 2
 - Mr. Seminaro. A
 - Did you take the bills that had been marked in 0

evidence with you at that time?

- A Yes, I did.
- Q Following that date, did you have any further telephone conversations, any telephone conversations with Mr. Stoppiello?
 - A Yes, I did.
 - Q Who called who on those occasions?
- A Originally, I called him because he had given me a telephone number and I hadn't given him one where he could reach me.
 - Q What did he say on that occasion?
- A We spoke about generalities, about the counterfeit bills, the quality and whether or not he would be able to get a larger package of counterfeit for me.

(continued next page)



Mauro 2 End ofday bs/nd

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DIRECT ENAMINATION

BY MR. BERGMAN: (Cont.)

- Did you soeak by telephone with him on any other occasions?
 - A Yes.
 - Pollowing that first telephone call?
 - A That is correct.
- 9 What conversations did you have with him on those -- at those times?

A We agreed to physically meet in Brooklyn to discuss counterfeiting further, getting more counterfeit bills.

Q Did Mr. Stoppiello mention at that time any conversations that he had with other people concerning this transaction?

A He said that he had spoken to his -- this individual Joe and that he would be able to get me approximately -- if I wanted to purchase \$10,000 worth of counterfeit it would cost me approximately \$27.00 in genuine currency for every hundred dollars in counterfeit.

Q Did there come a time when you met a second time with Mr. Stoppiello?

A Yes, sir.

Q When was that?

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1	2 Riley - direct
2	A That was in Say Parkway in Brooklyn.
3	Q What was the date, if you recall?
4	A December the 10th, 1971.
5	Q You met the first time with Mr. Stoppiello on
6	December 10, is that correct?
7	when was the second time you actually met with
8	him in person?
9	A December the 30 it was, December 30.
10	Q Where was that meeting?
11	A Bay Parkway in Brooklyn, 72nd Street.
12	Q Was that meeting arranged pursuant to the
13	earlier conversation that you had by telephone with Mr.
14	Stoppiello?
15	A That is correct.
16	on the occasion that you met him on the 30, wer
17	you accompanied by anybody during that meeting?
18	A No, I was alone.
19	Q Were there any surveilling agents at that time?
20	A I believe there were.
21	Q About how many were there, if you recall?
22	A One or two.
23	Q. Now, what occurred at that meeting on December
24	30th, Agent Riley?
25	A I met Mr. Stoppiello on Bay Parkway, and I

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believe it was 72nd Street in Brooklyn, and he got into my car and we spoke again about the counterfeit bills.

- What discussion did you have at that time?
- A We spoke about the price again. He told me that he might be able to get me \$10,000 worth of counterfeit bills at this figure that I mentioned earlier, 27 points in genuine currency for a hundred in counterfeit.
 - Q What did you tell him, if anything?
- A I told him I'd have to get back to him and let him know what final decision that I would make regarding any purchase.
- Q Did you receive anything from him on that occasion?
 - A Yes.
 - Q What did you receive?
 - A Two other counterfeit bills.
 - Did you pay for these?
 - A I paid for one of the bills, not the other.
 - o How much did you pay for the one you paid

A Three dollars.

Q I show you Government Exhibit 12, Agent Riley.

Can you identify this exhibit?

A Yes, I can.

What is it?

A These are the two counterfeit bills I received from Mr. Stoppiello on December 30th, 1971.

now is it that you are able to make this identification?

A I put my initials and the date on the top of the bills -- bills here.

MR. BERGMAN: I offer them in evidence at this point, your Honor.

THE COURT: Any objection?

MR. SCHACHER: I object, your Honor.

THE COURT: Objection overruled.

Again, this transaction is not admissible against the defendant. The testimony is that it was a transaction between Mr. Stoppiello and himself, and it is idmissible against this defendant only if the Government proves beyond a reasonable doubt that there was a conspiracy at about the time set forth in the indictment; that this transaction was during the term of the conspiracy and in furtherance of the objects of the conspiracy.

If the Government proves all that, and further proves that the defendant Mauro was a member of the conspiracy and Stoppiello was also a member of the

A cured bill is when the counterfeiter attempts

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an uncured bill.

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to disguise the color, the white color to make it more passable to the public.

what he'll do is he'll dip it in coffee or tea or he'll spray it with starch or four so he could pass it easier to the public. That's what you call a cured bill.

O Looking at the exhibit before you, which I believe is Exhibit 11 -- is it Government Exhibit 11 before you?

THE COURT: The eight bills are Exhibit 11.

2 I am sorry. Government's Exhibit 12. Is there a cured bill among the two bills that are there?

A Yes, there is.

Q Would you hold it up and show it to the jury, please?

A This one is the cured one.

THE COURT: Aren't both of them cured?

THE WITNESS: No, sir.

THE COURT: All right.

Suppose we identify what you said is cured

and mark it "cured bill." 12A out of 12.

THE CLERK: So marked.

(So marked.)

BY MR. BERGMAIL:

Is there an uncured bill in this Government

Exhibit 12?

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There is. A

Can you identify it, please?

It's the lighter bill, the lighter colored bill. THis one here.

Will you hold it up and show it to the jury, please.

> MR. BERGMAI: 'Could we have this marked 12B? THE COURT: We will remark it if you wish and I will mark the bill behind 12A, 12. Unstaple it and put the staple on what the witnesss said was the uncured bill.

> MR.BERGMAN: Your Honor, I would like to pass Government Exhibits 12 and 12A to the jury.

> > (Exhibits circulated amongst the jurors.)

BY MR. BERGMAN:

Is there a difference between the bulk prices of uncured counterfeit bills and cured counterfeit bills, Agent Riley?

Usually cured bills will go for a higher price, usually.

Following your receipt of these two bills on December 30 from Stoppiello, did you make any further arrangements with him at that time?

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A I told him that I'd get back to him.

Q Did there come a time when you had a telephone conversation with him following December 30?

A Yes.

Q What was said in that conversation?

A He indicated to me he had possession of a package of counterfeit bills, \$5000 worth, and he was ready to sell it to me.

Q What was the price that you would be buying that package of \$5000 worth of counterfeit bills for?

A He wanted to sell it at \$27.00 genuine for a hundred counterfeit.

But after discussion we agreed to -- he agreed to sell it to me for \$25.00 in genuine currency per a hundred counterfeit.

Q What was to be the denomination of the counterfeit bills that you were to receive?

A They were ten dollar bills.

Q Did you make arrangements at that time during that telephone conversation for any further meeting?

A Yes. I was to meet him on January 4th, 1972.

Q At what time were you to meet him?

A I believe originally I was supposed to meet him 11:00 o'clock that morning.

1	9 Riley - direct 566
2	Q Did you meet him at 11:00 o'clock that morning?
3	A No, I didn't.
4	Q Were there any communications between the two
5	of you at that time or around that time?
6	A I called him back and indicated to him I
7	wouldn't be able to meet him at 11:00 o'clock , but I would
8	be able to meet him at 2:00 o'clock.
9	Q Where was that meeting to take place?
10	A Bay Parkway and 72nd Street, Brooklyn.
11	Q At that time, January 4th, had the price been
12	definitely arranged or set at that time?
13	A The price was finally arranged that day,
14	right.
15	Q Did there come a time on January 4th when you
16	met Louis Stoppiello again?
17	A That is correct.
18	Q Where did you meet him?
19	A Bay Parkway and 72n Street, Brooklyn.
20	Q Were you with anybody at that time?
21	A Yes, I was.
22	Q Who were you with?
23	A I was with Agent Rick Sanno.
24	Q Where was he at that time?
25	A We were both in my car parked at Bay Parkway

1	10 Riley - direct
2	and 72nd Street.
3	Q What type of car was that?
4	A It was a blue Cadillac.
5	Q das that a car owned by the Secret Service?
6	A Yes, it's an undercover vehicle.
7	Q How does the Secret Service obtain undercover
8	vehicles, usually?
9	MR. SCHACHER: Objection, your Honor.
10	THE COURT: Objection sustained. It looked
11	like any other civilian car, did it?
12	THE WITNESS: That is correct.
13	THE COURT: There was no markings on it that
14	indicated it was Government owned?
15	THE WITNESS: That is correct.
16	MR. BERGMAN: Thank you, your Honor.
17	BY MR. BERGMAN:
18	Were there any surveilling agents on the scene?
19	A Yes, there were.
20	Q About how many?
21	A Say approximately seven, I'm not certain.
22	Q Did there come a time when you saw Louis
23	Stoppiello?
24	A Yes.
25	Ω Did there come a time when you saw Sal Seminara?

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Where did you see them and what were the circum-

First Mr. Seminara came in my car and ne said

You can't testify to what he said. 0

Did you have a conversation with him at that

Yes. A

How soon thereafter did Mr. Stoppiello -- did you meet with Mr. Stoppiello?

- Approximately a minute afterwards, two minutes. A
- Where did that meeting take place?
- On Bay Parkway and 72nd Street, Brooklyn. A
- Was that in the car? 0
- That's correct.
- Where were you seated, if you recall. 0
- I was by the driver's side.
- Where was Agent Sanno? 0
- A To my right.
- Where was Mr. Seminara? J
- Mr. Seminara sat in the back of the car. A
- Where was Mr. Stoppiello?
- de came in the back of the car also.

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Riley -	- direct
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12 Did you have a conversation at that time with 0 2 Mr. Stoppiello? 3 Yes. 4 Did you introduce him to Agent Sanno? 0 5 That is correct. 6 What did you introduce Agent Sanno as, or who? Q 7 A friend of mine. I don't recall the name. 8 Did you have a discussion at that time? 9 A Yes. 10 What was that? 11 He said he had the counterfeit, but it wasn't A 12 with him. 13 Where did he say it was? Q 14 He said it was in the cellar of his house. A 15 Was there any further discussion at that time? Q 16 He wanted me to go with him to pick up the A 17 money. 18 What did you say to him? Q 19 I told him I wouldn't go with him. A 20 What did he say? 2 21

He said then he'd get it and bring it back to A

me.

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Did there come a time when he left the car? 0

Yes.

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1	13 -	,	Riley direct	570
2		0	Did there come a time when Mr. Seminara	left
3	the can	r?		
4		A	Yes.	
5		Ġ -	Did they leave together?	
6		A	Yes.	
7		Q	Did you see in which direction they hear	ded
8	to?			
9		A	They walked behind me and after that I	couldn't
10	see ex	actly w	hat direction.	
11		Q	Now, did there come a time when they re	turned?
12		A	Yes.	
13		Q	How soon after they left did they return	n, in
14	terms	of minu	tes, hours or whatever it may have been?	
15		A	It might have been a half an hour.	
16		Q	During that period of time, Agent Riley	, what
17	did yo	u do?		
18		A	I drove my car I was facing Bay Park	way
19	northb	ound, I	made a right turn, another right turn,	because
20	I thin	k I was	near an intersection, I wanted to get of	ff the
21	main i	ntersec	tion and I parked it near a gas station.	I
22	believ	e it wa	s Avenue O.	

Q Excuse me.

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- A I believe the gas station was on Avenue O.
- Q Did you remain in that parked spot?

1	14		Riley - direct	571
2		A	No. I got out of my car.	
3		Q	Where did you go?	
4		Λ	I went to the gas station.	
5		Q	Did you notice anything at the time you	parked
6	your ca	r?		
7		A	At the time I parked it?	
8		Q	Yes.	
9		A	No.	
10		Q	What occurred when you went to the gas	station?
11		A	I went to the telephone booth.	
12		Q	Did you call anybody at that time?	
13		A	Yes.	
14		Q	Who did you call?	
15		A	I called my office.	
16		Q	Did you have a conversation with some	oody at
17	your o	ffice?		
18		A	Yes.	
19	Q	Did	there come a time when you left the tel	ephone
20	booth?			
21		Α .	That is correct.	
22		Q ·	Will you describe the events that occ	urred
23	therea	fter?		_
24		A .	Well, while I was making my telephone	
25	I saw	the do	fendant, or later learned his name was	Joseph
The second second	II .			

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Mauro, pull up in the gas station in a green Mustang. He watched me the entire time I made my telephone call, or appeared to watch me.

MR. SCHACHER: Objection, your Honor.

THE COURT: Overruled. I will allow it.

MR. SCHACHER: The word "appeared."

THE COURT: Was he looking in your direction?

THE WITNESS: He was looking right at me.

When I hung up the phone I started to walk back to my car and the defendant, Mr. Mauro, walked up to me.

- Q What then occurred?
- He could have walked to my right -
 MR. SCHACHER: I object to that, your Ronor.
- Q Will you describe --

THE COURT: Don't tell us what he could have done. Tell us what happened.

THE WITNESS: He walked up to me and gave what is known in police parlance as a pat, slight patdown.

- Q What were you wearing on that day?
- A Sports clothes.
- Q You were wearing a sport jacket or anything?
- A It was a sweater or a jacket. It was in the winter so I assume I was wearing a jacket.
 - Q When you passed by him did he actually touch

you in any way?

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With both hands.

Now, would you be able to demonstrate what he did to you on me?

> A Not exactly, but --

THE COURT: Try to simulate it as closely as you can.

- Step down from the chair, Agent Riley? If I have to open my jacket or close it tell me.
- A I believe my jacket was open as it is now.
- Were there any obstacles or any pumps or other Q things in the place that you were walking when this occurred?
 - No, not when I walked from the telephone booth. A
 - 0 At the time that the defendant touched you?
 - No, there was nothing near either one of us. A
- Will you describe what occurred; physically 0 show us.
- He was looking at me, I was looking at him, and he appeared to walk up to me and he like slipped like that, and as he did so, he put his hands on both sides of my waist.
 - Q All right.
- Will you resume the stand, please. Were there any oil slicks on the ground that you noticed?
 - I didn't notice any.

1	17	Riley = direct	574
2	6	Following that, what did you do?	
3	A	I walked to my car.	
4	Q	Did you enter the car?	
5	A.	Yes.	
6	Ĵ	Did you have a conversation with Agent	Sanno?
7	λ	Yes.	
8	Q	Did you notice anything at that time?	
9	A	The man, Mr. Mauro, I learned later	his
10	name was Mr.	Mauro got into a green Mustang he had	l been
11	driving to th	e gas station, he parked his car direct	ly behind
12	my car where	I was parked.	
13	Q	How far away was his car from yours?	
14	A /	Thirty, forty feet.	y
15	Q	Was hore anybody else inthe car with	Mr.Mauro
16	at that time		0
17	A	There was another individual, yes.	
18	Q	Did you later learn his name?	
19	A	I believe his name was Bills.	
20	Q	Thereafter what occurred?	
21	A	I remained in my vehicle for a number	
22	minutes and	I saw Mr. Seminara and Mr. Stoppiello wa	lking
23	towards my c		
24	Q	What, thereafter, occurred?	
25	. У	Mr. Stoppiello remained on the corner	and

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Mr. Seminara entered my car.

- Q Did he have anything with him at that time?
- A He had a package, yes.
- Q Was there anything in the package?
- A Yes.
- Q What was in the package?
- A A number of counterfeit bills.
- Q What did he do with them?
- A Gave me the bills.
- Q Did he give you the package with it?
- A Yes.
- Q I show you Government Exhibit 13, a brown paper bag and its contents.

Can you identify the exhibit?

- A Yes, I can.
- Q What is it?
- A These are counterfeit bills I received from Mr. Seminara.
 - Q Can you identify the brown paper bag?
- A I can't be certain. Yes, this is the paper bag that the bills were in.

MR. BERGMAN: Your Honor, I would offer in evidence Govenment Exhibit 13 at this poir.

MR. SCHACHER: Same objection, your Honor.

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THE COURT: Objection overruled.

You will recall the limiting instructions I gave you on the last offer.

MR. BERGMAN: May the contents of 13 be deemed to include the No. 13, or do you want it 13A --

THE COURT: The bag and the contents are 13. If you refer specifically to any particular bill then we will mark it specifically.

THE CLERK: Government 13 previously marked for identification is now marked in evidence.

(So marked.)

BY RM. BERGMAN:

Prior to your meeting, your expected meeting with Mr. Seminara and Mr. Stoppiello, had a prearranged signal of any type been arranged between you and the surveilling officers?

That is correct.

What was that signal?

If I received delivery I was to pop the trunk of the car I was riding.

I'm sorry?

Open the trunk of the car I was riding in.

Did there come a time after you receive d the counterfeit money when you popped or opened the trunk of the

	577
1	20 Riley - direct
2	car?
3	A Yes.
4	Q What thereafter occurred?
5	A Arrests were made.
6	Q Did you actually transfer any real money to
7	Mr. Seminara?
8	A I believe I handed him a portion of the genuine
9	money I was to buy the counterfeit with.
10	Q Following your opening of the trunk, describe
11	the events that occurred?
12	A I was arrested.
13	Mr. Seminara was arrested, a simulated arrest
14	was made of him, rather. Mr. Stoppiello excuse me,
15	Agent Sanno was arrested, also. Mr. Stoppiello, when is saw
16	the agents pulling up in the cars, he ran away. And the
1/	two individuals that were in the green Mustang behind me were
18	also arrested.
19	Q You mentioned a simulated arrest of Sal Seminar
20	He was the informant in the case; is that correct?
21	A That's correct.
22	as vell as
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What was the purpose of a simulated arrest

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in that situation?

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MR. SCHACHER: Objection, your Honor.

THE COURT: Sustained.

MR. BERGMAN: I have no further questions of this witness.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. SCHACHER:

Q Mr. Riley --

MR. BERGMAN: Your Honor, there are some materials that I believe Mr. Schacher should have.

THE COURT: The jury may be excused.

(Jury excused.)

THE COURT: Will it be any great inconvenience
if I asked you to return on Monday, Agent Riley?

THE WITNESS: If you want me, of course

I'll be back.

THE COURT: I don't know how long is will take.

MR. SCHACHER: I'd rather have it Monday,

if you don't mind, sir.

THE COURT: If the examination isn't going to be extensive.

MR. SCHACHER: There is the 3500 material

I'll- have to look over. I haven't seen it at all.

me --

THE COURT: Suppose you look at it and tell

MR. SCHACHER: Judge, I am tired.

MR. BERGMAN: The Grand Jury testimony of Michael Riley dated February 10, 1972, a copy of which is being given to Mr. Schacher.

THE CLERK: Marked as Government's Exhibit 24 for identification.

(So marked.)

MR. BERGMAN: Three-page report signed by Michael Riley, dated December 13, 1971, a copy of which is being given to Mr. Schacher.

THE CLERK: So marked as Government's Exhibit 25 for identification.

(So marked.)

MR. BERGMAN: Two-page report by Michael Riley dated January 7, 1972, a copy of which is being given to Mr. Schacher.

THE CLEKR: So marked as Government's Exhibit 26 for identification.

(So marked.)

MR. BERGMAN: Finally, a two-page report by Michael Riley dated January 13, 1972, a copy of which is being given to Mr. Schacher.

xxxx

THE CLERK: So marked Government's Exhibit 27 for identification.

(So marked.)

MR. SCHACHER: I request and beg the Court, with all my strength that remains, sir, to go over to Monday morning. I haven to made this request before but I am going to do it now.

THE COURT: I am not going to insist that he go on.

Mr. Schacher started off tired. You are pretty tired by now.

MR. SCHACHER: I am shot by now, Judge. I can't even function properly right now.

THE COURT: I am sorry. You will have to come back Monday. I had hoped to avoid it but I can't.

MR. SCHACHER: If the Government gave us this information at the right tive, there are some U.S. Attorneys who do that but some don't.

THE COURT: I agree, some are tougher than others.

MR. BEEGMAN: Your Honor, it's not a universal policy that I follow. There are some cases in which I do give the 3500 material before the trial and some I don't. This is one I chose not to .

THE COURT: I'm not going to second guess the
U. S. Attorneys. I don't think I have the right to say
anything more. You know your case better than I.

Bring the jury in, please.

(Jury present.)

THE COURT: We will suspend at this point.

The case will not continue tomorrow, so do not come in tomorrow.

The case will continue Monday at 10:00 o'clock.

I have every reason to believe that this case will

be completed by Tuesday, given to the jury by Tuesday.

Do not hold me to it.

I try to estimate the time so that you can make arrangements for whatever work you have to do. There is every likelihood that it will be finished by Tuesday.

In the meantime over the long weekend do not discuss the case, do not talk about it at all.

Do not even think about it; somebody said "That's the way to get jurors thinking about it."

They say, "Don't think about white elephants."

Well, in order not to think about white elephants,

you have to think about them, so that is why I say,

"Do not think about the case." At any rate, even if

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you do think about it, do not come to any decision.

Try not to think about it. Do not talk about it, certainly; when you reassemble Monday morning, please do not talk about it among yourselves.

Again, try to get here about 9:30, registering first in Central jury room and then come to the jury room adjoining the courtroom.

The jury is excused. I will see you Monday morning.

(Jury excused.)

THE COURT: You may step down, Mr. Riley.

(Witness excused.)

THE COURT: I don't think there is anything else, gentlemen, unless you think of something?

MR. BERGMAN: Nothing, your Honor.

THE COURT: If either lawyer has any application Monday morning, please advise your adversary and set it down for 9:30. Do not wait until 10:00 o'clock to make your application.

All right, gentlemen. Have a nice weekend. See you on Monday.

(Whereupon, the trial was continued to Monday, March 3rd, 1974, at 10:00 o'clock a.m.)

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THE COURT: All right, you may step down, Mr. Reilly.

(Witness excused.)

THE COURT: Next witness?

MR. BERGMAN: The Government calls John Viggiano.

JOHN VIGGIANO, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. VIGGIANO:

Q Mr. Viggiano, --

MR. SCHACHER: May we approach the bench, if your Honor please?

THE COURT: The Jury may be excused.

(The Jury left the Courtroom.)

MR. SCHACHER: I may be overguessing, Judge,
I don't know -- is it my belief that Mr. Bergman
will in some way make reference to the steering
column of the car?

MR. BERGMAN: Yes, I will do that and I suppose in the spirit of --

MR. SCHACHER: I --

MR. BERGMAN: Let me just say one more thing,

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Viggiano-Direct

Mr. Schacher, as long as we have the Jury out.

I would also intend to elicit through this witness his testimony that when he arrested Louis Stoppiello on January fourth, or in any event when Louis Stoppiello was brought into Secret Service Headquarters at that time Louis Stoppiello told the agents that Joseph Mauro was the individual who was supplying him counterfeit money.

Now, I'm aware that that seems to smack at the -- at the issue we just resolved against the Government as to Agent Reilly's testimany, but I would submit, your Honor, it's somewhat different because Mr. Schacher made extensive inquiry --

THE COURT: No, we have still another problem.

Didn't the conspiracy cease? Of course a conspiracy doesn't necessarily terminate at arrest but certainly is some proof. Didn't the -- didn't the conspiracy cease as against Louis Stoppiello?

MR. BERGMAN: No question that if it were sought to be admitted as a hearsay statement coming within the co-conspiracy exception that it would not be. The Government concedes that the conspiracy enced at the arrest, of course.

However, Mr. Schacher in his testimony --

Viggiano-Direct

MR. SCHACHER: In my testimony?

MR. BERGMAN: I'm sorry, in his cross-examina-

tion --

THE COURT: You may be right. Go ahead.

MR. SCHACHER: I take exception, your Honor.

(Continued on the next page.)

MR. BERGMA. (Intinuing) -- in his cross-examination of hr. Stoppiello, began a rather extensive inquiry with Stoppiello as to when he first cooperated with the Government, and I think we had --

MR. SCHACHER: Not in regard to what he said or did, I just said when he cooperated.

MR. BERGMAN: Even giving the inference which is at this point hanging in the courtroom, that Stoppiello only began cooperating after he was indicted.

THE COURT: Well, I don't think --

MR. BERGMAN: Perhaps I'm mistaken in using the word cooperation.

THE COURT: I don't think the proof is that he started cooperating immediately upon arrest. That's not my recollection.

MR. SCHACHER: He said two or three months thereafter, your Honor.

MR. BERGMAN: The worst that can be said of my offer of proof is that I'm impeaching my own witness, but I think Stoppiello's testimony --

THE COURT: In other words, the worst that can be said is that it's pure hearsay. That's the worst that can be said. If it would merely impeach your witness, I have a stock explanation for that: The party does not

vouchsafe for the voracity of the witness it calls, he or she calls. That's not the goounds.

It's pure hearsay. Stop the yellow -- It couldn't be used -- It could be used against Stoppiello. It couldn't be used anywhere else, unless the conspiracy was in existence. That's the exception. I won't allow it.

MR. BERGMAN: Not as a correction to a recent fabrication, either?

THE COURT: No, an explanation or an answer to a challenge to testimony that's of recent fabrication, where you can show prior consistent statements. It's not even inconsistent with anything he said. It just would firm up the Government's position that Mauro was supplying Stoppiello with counterfeit money. I won't allow it.

MR. HERGMAN: All right, your Honor.

I think it's your floor, Mr. Schacher.

MR. SCHACHER: Sir?

MR. BERGMAN: Your floor.

MR. SCHACHER: I don't think it's --

THE COURT: You had something else to say. You say --

MR. SCHACHER: Yes, I make reference to the fact of the alleged finding of money in the steering wheel column of the car.

THE COURT: Yes.

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MR. SCHACHER: I would object to any introduction or any statement -- any testimony in that respect, your Honor. This took place quite some time thereafter.

There is no proof here that Mr. Mauro was present when the search was made, and it did ake place quite a bit of time after it was in Police custody, or Government custody.

THE COURT: And what you're saying -- Are you attacking the search?

MR. SCHACHER: I'm attacking the duration of time, your Honor.

THE COURT: You aren't attacking the validity of the search?

MR. SCHACHER: Based upon the time element, I am, sir.

THE COURT: Explain it. You know I don't want to --

MR. SCHACHER: Well, it's my contention that this

THE COURT: I want you to give --

MR. SCHACHER: It was my contention, your Honor, this car was searched some time in March, this particular area of the car. It's been in their custody since

January, sir. Now, nobody knows who put that money there.

THE COURT: What have you got to say about that,
Mr. Bergman?

MR. BERGMAN: Perhaps while I'm making my arguments your Honor would like to read a case, United States v. Weiss, just recently decided, from the Sixth Circuit, 488, F.2d, 563.

THE COURT: Was this car forfeited?

MR. BERGMAN: Well, it was the subject of forfeiture proceedings at that time.

THE COURT: Well, that's the answer. I don't know-MR. BERGMAN: This case, I give it to your Honor,
if your Monor were to read the substantive question posed
by Mr. Schacher's objection. But before I'd even get to
that, your Monor, I'd say simply this: That this is
another instance in which Mr. Schacher has waited until
the 11th hour to make an objection to something --

MR. SCHACHER: Wait a minute. I didn't get the 3500 Material until this trial started, your Honor.

THE CCURT: You didn't know that the bills were going to be offered in evidence?

MR. SCHACHER: I had no knowledge that any bills were found in the steering wheel column, your Honor.

MR. BERGMAH: Your Honor, it's in the transcripts,

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again. Mr. Mauro talks about it. And that's the final conversation he has with Stoppiello.

THE COURT: There is reference about the steering column, but I didn't learn that from the transcripts.

MR. SCHACHER: That's correct.

THE COURT: He talked about the steering column.

MR. SCHACHER: Nothing about bills, though.

MR. BERGMAN: In any event, your Honor, the material, the 3500 Material, provided Mr. Schacher that information.

THE COURT: Under what authority was the car forfeited?

MR. BERGMAN: I am sorry, sir?

THE COURT: Under what authority was the car forfeited?

MR. BERGMAN: It never actually was forfeited.

It was returned to the defendant.

MR. SCHACHER: How many months after you had it was it returned? About four or five months?

THE COURT: Mr. Schacher, please, there's no sense arguing with Mr. Bergman.

MR. SCHACHER: I'm not arguing, it's just my way of talking, Judge.

THE COURT: It just isn't in point. You see,

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here, under Weiss, the Court found that the Police Officers had a legal right to look into that glove compartment because the wife complained that her car was missing, and so they opened the glove compartment to learn the ownership of the car, identification. When they did that, they saw counterfeit bills.

Now, once they find the car is being used to transport counterfeit bills, it was subject to forfeiture.

Once the car is forfeited, every part of the car belongs to the Government. They have the right to take it apart, or do anything else.

That's not what happened here. Here, the defendant was arrested, the Agents then took full and complete custody of the car. They had no proof that this car was being used to transport counterfeit bills. As a matter of fact, they never forfeited the car.

What they did is, while it was in custody, they decided to go through the -- disassemble the car.

MR. BERGMAN: Your Honor --

THE COURT: I'll try to find the case I have in mind.

MR. BERGMAN: But, no, I submit that in the weiss case, the very question to be asked, at least initially, at least, goes to the question of whether or not the

Government has the car lawfully, under a proper seizure.

Now, in Weiss --

THE COURT: No, the right to search. The right to search.

MR. BERGMAN: The right to search, as I read Weiss, is predicated at the very least initially on whether or not the Agents had the right to seize the vehicle. Now, I -- Of course, in this case there has been no evidence --

THE COURT: I'll give you the Supreme Court case, which I should have on my fingertips, but don't, which says you can't do it.

MR. BERGMAN: Well, this Cady V. Dombrowski, I don't know if it's mentioned in here.

THE COURT: Well, of course, you cite the cases.

But the trouble with the cases is that first the law enforcement Officers have the right to enter the car.

It may be because there was a violation and an arrest, and a search of the person. And they find that the car is being used to -- to transport contraband, and then the car is seized.

Now, once the car is seized and the Government
has title to it, they can do anything they want with it.
What gives the Government the right to disassemble

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a car after they have arrested the man, and days, or maybe a month after --

(continued on next page.)

MP:GA T4R1 AM

MR. SCHACHER: Two months.

THE COURT: Or two months after the arrest. I will give you the case. We will take a short recess.

You've got a very serious problem on the introduction of the bills. Not on the grounds stated by Mr.

Schacher, but --

MR. BERGMAN: If I can perhaps dig up some additional authority, your Honor -- What is the precise problem?

THE COURT: The problem is this, the man is arrested, the Police Officers took custody of the car.

They have every opportunity to get a search warrant if they wanted it. The trouble is that you probably had no grounds to get a search warrant because you didn't know there was anything hidden in the car unless Stoppiello said he hid the counterfait bills.

You didn't have that. So what happens, he decides to take the car apart, and lo and behold, there are counterfeit bills. Until that point, you had no right to disassemble the car. You had no right to forfeit, because you didn't know it was being used to transport counterfeit bills. And two, you had no reason or right to forfeit it -- Am I repeating myself? I'll say it again.

One, you had no reasonable cause to believe that

the car was being used to transport contraband; and two, you had not ground to forfeit the car. Either one of those would have given you the right to disassemble the car.

MR. BERGMAN: I may make an offer of proof. My understanding is this, Joseph Mauro's car, when it was initially seized on the 4th of January, was not seized on the basis of any whim, but on the basis of information that had been supplied by the informant in the case, to the effect that Mr. Mauro was dealing in counterfeit money, and his car in one way or the other had been involved in the transportation of counterfeit money.

Instead, Soppiello, when he met with Agent Reilly on the 10th in the hospital, told Reilly that his friend, Joe, had gone on a recent hunting trip in New York and spent or passed 13 of these bills.

What I am saying is this, aside from -THE COURT: Did you say he used this Mustang?
Did he say he used this Mustang?

MR. SCHACHER: No, your Honor.

THE COURT: The evidence isn't there. The answer to that is, he should have gotten a search warrant.

MR. SCHACHER: There was ample opportunity.

THE COURT: Don't support me, Mr. Schacher. I may

find a reason to --

MR. SCHACHER: I'm sorry, your Honor.

THE COURT: You know, I am playing the Davil's
Advocate, because you were wrong in your reasoning before.

MR. SCHACHER: I will say nothing more.

MR. BERGMAN: Let me retire to my office.

THE COURT: I will find the Supreme Court Case.

I just know the case --

MR. BERGMAN: Can you give me the facts again?

THE COURT: It is against New Hampshire.

MR. BERGMAN: Coolidge against New Hampshire, that is it.

You also have Marroni --

MR. SCHACHER: That was a "hot pursuit" case, Marroni.

MR. BERGMAN: If the Government were able to satisfy your Honor that the car was seized properly for the purpose of instituting a forfeiting procedure against him, under the applicable Section in Title 48, and having proper custody of the vehicle, if the Agents thereafter received information from a reliable individual to the effect that countarfeit money was secreted in the car, the question initially, I suppose, would be --

THE COURT: Lock, in all these cases, the time

element is very important. We start with the time the car was seized. Did the Agents ever have a right to take it for a minute?

MR. BERGMAN: Those are cases where the Agents' right to control the car stems not from any right of forfeiture, but rather, simply because an arrest was made near it. There is an extension of the Schimmel problem, involving the distance. Recently, the Robinson case came down, which involved an arrest by a Police Officer in the District of Columbia.

MR. SCHACHER: That was where there was a crime right then and there.

MR. BERGMAN: It was a traffic violation. And there was a search of the car.

THE COURT: That is what I am saying. A search of the car of the matters that were in plain view -- that was the phrase -- may be seized.

MR. BERGMAN: They weren't in plain view.

MR. SCHACHER: There are two cases, one in Florida, and one in Washington.

THE COURT: I read them all. I excerpted most of them, and I wrote on Coolidge against New Hampshire.

MR. BERGMAN: What I am trying to say -- I don't think this is a Coolidge problem. I think this is a

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specialized problem.

THE COURT: It is Coolidge.

MR. BERGMAN: What did I say? I don't think it is a Coolidge problem. Per se, it is a Fourth Amendment problem. It is a specialized Fourth Amendment problem which is governed primarily by --

to go to the car. I had a similar situation a long time ago, before all these cases, where somebody screamed for help about 2:00 o'clock in the morning, and the Police Officers went into the apartment, broke into the apartment, because they thought somebody was in serious trouble. And then they heard a -- one of them heard the toilet bowl being flushed, and when they went in, it was regurgitating, and counterfeit bills were floating on the top.

Admissible? Sure. In the first instance, the Police Officers had a right to be where they were.

And, in White, of course, they had the right.

The owner of the car said, My car has been stolen. She described the car. They found the Oldsmobile, and looked for the ownership. They opened the package compartment and there were counterfeit bills.

They have a right to open that package. Sure they do, because the wife asked them actually to do that when she said, My car was stolen.

Now, once you find a reason for the Police Officers doing what they are doing, then if they happen to find contraband, that is one thing. We don't have it here. We have an arrest. They take possession of the car. Do they have a right to take possession of the car? That is a question. You say they learned later that there was going to be a forfeiture. That doesn't give them the right to possession.

MR. BERGMAN: No, the car initially was taken from Mr. Mauro. The very day of his arrest, that was.

THE COURT: Why?

MR. BERGMAN: As a vehicle to be forfeited to the Government.

THE COURT: Why? No proceedings were instituted-

MR. BERGMAN: Of course not.

THE COURT: You had no grounds for forfeiture.

MR. BERGMAN: That is not so, your Honor.

THE COURT: What is so?

MR. BERGMAN: I would suspect that the reason this particular car was forfeited, or proceedings were foregone, was the fact that the complaint had been dismissed against Mr. Mauro in February. The complaint initially filed against him --

MR. SCHACHER: You still had the car, and Judge

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Catoggio had to get the car back for this man.

ground to hold him, even after you had the car. What grounds did you have to take the steering wheel apart?

MR. BERGMAN: On the basis of information to the Agents.

THE COURT: The Magistrate already dismissed the case.

MR. BERGMAN: The Government had dismissed the case.

MR. SCHACHER: Pursuant to Judge Catoggio's insistence.

MR. BERGMAN: What it comes down to is, where the Agent doesn't have a law enforcement purpose for searching the car it is okay, but where they have specific information, then it is no good. That seems --

make the search. Is it a search incident to an arrest?

The fact that the arrest was made in January, and the car wasn't searched until March, leaves me to believe that you just lidn't have the grounds to search the car.

MR. BERGMAN: Let me ask you this question. Let's assume --

THE COURT: The fact you didn't institute any

advertise, leads me to believe you had no grounds for forfeiture. It may have been all right when you got the information from Stoppiello. What was the date of the recording when he mentioned the steering column?

MR. SCHACHER: June.

THE COURT: When was the car disassembled?

MR. SCHACHER: In March, your Honor.

THE COURT: So you found it before then.

MR. BERGMAN: Thank you for answering all the questions directed to me, Mr. Schacher.

The bills were found March 3rd.

Let me ask a question, suppose the defendant is arrested after a bank robbery, and immediately taken into custody and shipped over to West Street, and there languishes for one reason or another for three months. During the course of the investigation, the Government finds a witness to the bank robbery who testifies that the bank robber came inside carrying not only a gun, but wearing a green jacket, corduroy slacks, and so forth. The Government realizes that the defendant who was arrested initially on those charges is wearing the very kind of clothing that was described by this witness.

And then they ask him to go into the changing room and

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issued a prison garment to him.

And at the time of the trial, the Government seeks

THE COURT: That is perfectly all right.

MR. BERGMAN: Who principle do we apply in determining whether or not that was a prompt seizure?

in. It was in plain view. They had a right to seize it.

MR. BERGMAN: They subjected the man to an indignity,
I suppose. We pass on that by virtue of the fact he is
unlawfully in custody.

THE COURT: There are two ways that you have a right to search. One is the search incident to an arrest, and the other is with a warrant. There might be a third way, if the property is forfeited and the Government owns the property.

MR. BERGMAN: I will try --

THE COURT: I see nothing here so far to permit you to make the search. Of course, with the usual laxity, the motion was made about 11:00 o'clock on March 4th.

I don't understand why it couldn't be done before

If there was any question that these bills would have

been offered --

MR. SCHACHER: I have no way of knowing.

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THE COURT: When Mr. Bergman marked them for identification, you didn't have any idea somebody was going to --

MR. SCHACHER: No, I had no idea. If I had had, +

THE COURT: What made you think about it?

MR. SCHACHER: Just as I read Mr. Viggiano's

report --

THE COURT: Today?

MR. SCHACHER: Over the weekend. I got them last Friday.

MR. BERGMAN: That is not so. You got them while cross-exemining Stoppiello.

That doesn't make it admissible, just because it was made this late, at the eleventh hour.

THE COURT: Have you got any testimony to fill in my time?

MR. BERGMAN: I've got O'Connor. You mean, from this witness?

THE COURT: From anybody.

MR. BERGMAN: I can get O'Connor down here.

THE COURT: How long will his testimony take?

MR. BERGMAN: It would be very brief, just the admissions made by the defendant, and slang of the trade.

THE COURT: Do we have a hearing on that? Do you

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THOMAS E. O'CONNER, having been

called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. SCHACHER:

Q Your Honor, it's my understanding this inquiry of Mr. O'Conner, will concern itself strictly to statements made by Mr. Mauro. in Mr. O'Connor's presence following his arrest.

THE COURT:

BY MR. SCHACHER:

- Q Agent O'Connor, what is your occupation?
- A Special Agent with the FBI, stationed in the New York office.

For how long have you been an FBI agent?

- A Almost 12 years.
- Q Directing your attention to July of 1972, during that month did you have occasion to arrest the defendant, Joseph Mauro?
 - A Yes.
 - Q When was that?
 - A July 13, 1972.
 - Q What time was that arrest?
 - A Approximately 7:35.
- Q Where was it?

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Bergman told me. I had no direct knowledge.

You didn't question him that morning, did you? THE COURT: Do we have an Escabido problem, do you know?

MR. BERGMAN: Mr. Mauro had been acrested in January of 1972 on the counterfeiting charge.

MR. SCHACHER: Your Honor --

THE COURT: I am asking a question, Mr. Schacher

MR. SCHACHER: Yes.

THE COURT: Did you know there was an attorney in the case?

MR. BERGMAN: I knew Mr. Rosenbaum had represented Mr. Mauro at the time Mr. Mauro was arrested in January on the counterfeiting charge. Mr. Mauro's complaint was dismissed against him some time, I think, in Feburary of that wear. Thereafter, the only dealing, if I had any at all, with Mr. Rosenbaum concerned the vehicle.

THE COURT: When was that?

MR. BERGMAN: Those conversations must have been subsequent to the dismissal of the complaint, and before the vehicle was eventually released to him, which is about a monthand a half span of time, or two months.

MR. SCHACHER: May I go on record saying when the vehicle was released?

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THE COURT: Did you know that Mr. Rosenbaum was coming to your office that morning?

MR. BERGMAN: After Mr. Mauro arrived and I gave him his rights, at that time, I questioned him as to some of the matters that had been covered by O'Connor concerning the loan sharking matter. I did not question him as to the counterfeiting.

After I had gotten whatever information the defendant seemed to be willing to provide for me, I asked him if he wanted to call an attorney. He said, "Yes, Mr. Rosenbaum."

Thereafter, he was permitted to call Mr. Rosenbaum, and I don't recall when Mr. Rosenbaum arrived.

I assume the Magistrate's record would indicate.

Not the Magistrate's record, the plea before Judge

Dooling on that afternoon.

THE COURT: There was no indication that Mr.

Rosenbaum was retained in this procedure for this charge?

MR. BERGMAN: I had no such indication. I knew that Mr. Rosenbaum had been Mr. Mauro's attorney on the counterfeiting case. I had had dealings with him up through April, involving his representation of Mr. Mauro regarding the seized vehicle. But as to any particular relationship between Mr. Mauro and Mr. Rosenbaum which

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1		O'Connor - cross	693
2	Q	Did he tell you on January 4th he went into	Lou e
3	house to get	money Louie owed him?	
4	Λ	Yes, he did.	
5	Q	He also told you he was arrested on January	4th,
6	did he not?		. ,
7	A	Yes.	
8	Ō	And he also told you that the case was dism	issed
9	in the United	States Magistrate's Court, did he not?	
10	A	Yes, he did.	
11		MR. SCHACHER: I have no further questions?	
12		THE COURT: Anything further?	
13		MR. BERGMAN: No, your Honor.	
14		THE COURT: You may step down.	
15		Any other witnesses?	
16		MR. BERGMAN: On this, no, your Honor.	
17		THE COURT: Mr. Schacher, any witnesses?	
18		MR. SCHACHER: May I just have one minutes,	your
19	Honor?		
20		THE COURT: Surely.	
21		(Pause.)	
22		MR. SCHACHER: I have a witness.	
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24		(continued on next page.)	
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THE	COURT:	(cont)		Bergman?
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MR. BERGMAN: So far as the ruling as to the admissibility, though, of the money found in the steering column, I had precious little time during the recess to check any cases, apart of course from the Cooper case.

THE COURT: What has that got to do with offering Mr. O'Conner?

MR. BERGMAN: Nothing, nothing at all.

THE COURT: That's all I'm saying.

Are you ready to call him?

MR. BERGMAN: He's coming down, your Honor.

THE COURT: Seat the jury.

(The jury returned to the jury box.)

THE COURT: Mr. Viggiano was sworn as a witness, but he is withdrawn by the Government, no questions were asked.

The Government now calls --

MR. BERGMAN: Agent Thomas O'Conner, your Honor.

TROMASE. O'CONNER, called as a

witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. BERGMAN:

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Q Agent O'Conner, by whom are you employed?

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1	O'Conner - cross
2	of your requests?
3	MR. BERGMAN: Yes, your Honor.
4	THE CLERK: Government's requests to charge
5	marked Court Exhibit 2 for Identification.
6	THE COURT: Mark the defendant's request to
7	charge.
8	THE CLERK: Defendant's requests to charge
9	marked Court Exhibit 3 for Identification.
0	MR. SCHACHER: Do you have a copy for me?
1	MR. BERGMAN: I just handed it to you.
2	MR. SCHACHER: I am over here and you put it
3	over there?
4	THE COURT: I am going to ask the lawyers to
5	come in at 9:30 and argue the question of admissibility
6	of the bills that were seized from the steering wheel.
17	I refer you to Coolidge against New Hampshire,
18	403 U.S. 443, 91 Supreme Court, 202.
19	Cady against Dambrowski I don't have the
20	official citation, 93 Supreme Court 2523. A 1973 case
21	MR. BERGMAN: The official citation on
22	Dambrowski, your Honor, is 413 U.S. 433.
23	THE COURT: Prefton against U.S., 376, U.S.
24	264 94 Supremo Court 991

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United States against Patchelli, decided

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citation for Cooper?

MR. BERGMAN: Yes, I believe so, your Honor.

Cooper appears in 87 Supreme Court 788.

THE COURT: What is the other one?

MR. BERGMAN: United States against Mazzochi,
I believe it is in 424 F 2nd, a Second Circuit case.
I don't have the page cite. I will call it to your chambers this afternoon.

THE COURT: If you have any evidence to show the Government has a right to this seized property, come in with the witnesses at 9:30 and be ready to start at 9:30.

MR. BERGMAN: Yes, sir.

THE COURT: Now, is that the Government's case after Mr. O'Conner -- then Mr. Viggiano and that is it?

MR. BERGMAN: Yes.

THE COURT: Which means you should be prepared to proceed immediately thereafter which would be as early as 10:30 or 11:00 o'clock. If the case is over, will you be ready to start your summation?

MR. SCHACHER: I think so.

THE COURT: Because I am going to pick a juzy
at 3:30 and ask the jury to come in on Wednesday. And
I don't want one jury backed on another one.

1	THE CLERK: United States of America versus
2	Joseph Mauro, case on trial.
EK:ss 3	THE COURT: Have you read the cases, Mr.
4	Schacher.
5	MR. SCHACHER: Yes, I have, your Bonor.
6	THE COURT: On what basis, Mr. Bergman, do you
7	say that the government can offer these bills.
8	MR. BERGMAN: Your Honor, in the memorandum of
9	law which the government has submitted to your Honor,
10	the government has endeavored to cite a line of cases
11	which deal with questions of search and seizures as they
12	arise under the forfeiture statute of the United States.
13	THE COURT: Will you agree that that is the only
14	basis possible.
15	MR. BERGMAN: In this particular case?
16	THE COURT: Yes.
17	MR. BERGMAN: Yes, your Honor.
18	THE COURT: All right, then we don't have to
19	argue about all the other grounds and all the other
20	cases.
21	MR. BERGMAN: That is as to searches and seizures
22	incident to an arrest or anything like that.
23	THE COURT: There is no question about that?
24	MR. BERGMAN: No question, your Honor.
25	But I would respectfully submit to your Honor

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that the cases that the government has cited, and I have copies of them in Court today, do point to a separate rationale for justifying searches without warrants conducted by officials where they properly have custody of a vehicle pursuant to the forfeiture statutes.

THE COURT: What proof did the agents have that this vehicle was being used to transport counterfeit money at the time it was seized.

MR. BERGMAN: Well, I think on the question of the right to seize the vehicle, I think there are two alternative issues, each of which if resolved in favor of the government could satisfy the Court.

First of all, if the agents had reasonable grounds to believe that the money had actually been transported in the car prior to the time that it was transferred into the undercover vehicle, then of course they had a basis, but I submit, your Monor, under the section -- and if you will bear with me for just a moment -- that is under Subsection 3 of Subdivision (a) of Section 781, and the section is quoted in the government's brief, and it provides that "It shall be unlawful to use any vessel, vehicle or aircraft to facilitate the transportation, carriage, concealment, receipt, purchase, sale, borrowing or exchange or giving away of

any contraband."

testimony that might be adduced at a hearing, shows that James Mauro first came on the scene, as far as the agents were concerned, on January 4th. Agent Reilly has testified that while he made a telephone call in the booth, he observed Mauro looking at him, examining him, and that as he left the telephone booth Mauro attempted in some manner to ascertain whether or not Reilly was carrying a weapon.

Now earlier, and of course thereafter, the car was observed by Agent Reilly to be parked several feet in back of the undercover vehicle, and the defendant Mauro was seated in that vehicle at that time.

Now earlier Stoppiello has testified that Mauro and Biltz were leery of the contact which Stoppiello had made through his friend, Sal Seminaro, and they were concerned that Reilly, or Mickey, as he was known to them, might be a police officer.

I submit on that theory or on those facts the government could probably advance the theory that Mauro was seated in the vehicle and the vehicle was being used in order to ensure the safety either of the money or the integrity of the transaction, and as such it was being used to facilitate what Mauro at the time believed

to be a sale.

Now the government is prepared, if your Honor needs additional evidence as to the government's prior knowledge of Mauro's involvement, to produce witnesses showing that, first of all, when Sal Seminaro came to the agency on December 3rd he told them at that time that Louis Stoppiello's source was Joseph Mauro. So that prior to the sale on the 4th, the agents did know of an individual named Joseph Mauro, indeed there is a cross index as to a paper in the government's file, in the Secret Service file, where Joseph Mauro was connected with some transactions in Oklahoma involving counterfeit money.

THE COURT: How does that prove that this car was being used?

It is an in rem proceeding.

MR. BERGMAN: The car was being used, the proof of the car being used is that it was there and that Mauro, one of the persons suspected of being involved in this crime, was seated in the car not more than 30 feet behind the undercover vehicle observing the scene, and not more than five or ten minutes before Mauro had attempted to ascertain whether or not Reilly was carrying a weapon, and in fact once Reilly returned to the car, and this evidence hasn't been brought out yet,

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me, when he spoke to Ronny the first time, and this is what precipitated the phone call, he advised him that Mauro was in the area, that he was carrying a gun and to watch out: That was the purpose of Reilly's phone call, which was to headquarters to inform them of this news that he had just learned.

arrested Joseph Mauro on January 4th, and I submit that was the reason, and that, coupled with the prior knowledge they had of Mauro's involvement and his presence at the scene a short distance from the undercover vehicle observing the events --

THE COURT: What proof is there in the record that the agents who seized the car knew from Stoppiello that Mr. Mauro had concealed counterfeit money in the steering column.

MR. BERGMAN: That evidence came later on, your Honor, that came on March 3rd after a point when Stoppiello had agreed to cooperate with the government, and he has a conversation with John Viggiano, and in it he tells him the bills are hidden in the steering column. I might add that that was prefaced --

THE CCURT: Told it to whom?

MR. BERGMAN: To Viggiano, and Viggiano

immediately searched the car.

THE COURT: That was the thing that induced the search?

MR. BERGMAN: Insofar as the government is concerned, of course that is the reason.

MR. SCHACHER: Your Honor, might I say one thing, please, sir?

MR. BERGMAN: Let me complete --

MR. SCHACHER: This was after the magistrate dismissed the case in February, sir.

MR. BERGMAN: May I make one additional point, your Honor.

THE COURT: I have another question.

procedurally, isn't there an obligation on the government after it takes the car that is forfeited to start advertising in the in rem procedure to effectuate the forfeiture?

MR. BERGMAN: Your Honor --

THE COURT: Isn't there a time limit.

MR. SCHACHFR: I don't know if the car is under \$2,500, I think it is, they can start an administrative procedure -- I am not certain on the procedures, but I submit your Honor respectfully --

THE COURT: What kind of a car was this.

MR. SCHACHER: This is a Mustang.

1	THE COURT: How old was the Mustang.
2	MR. BERGMAN: It was a 1967 Mustang.
3	THE COURT: A 1967 seized in January 19
4	MR. BERGMAN: '72.
5	THE COURT: '72.
6	MR. BFRGMAN: Now, may I make one additional
7	point:
8	I know your Honor is concerned with the idea
9	that this is remote. I hope to satisfy your Honor by
10	the cases that the government cited in the brief, and
11	there are a separate line of cases in this area, and
12	particularly the Burge case which I believe is a
13	Ninth Circuit case. It dealt with a situation almost
14	precisely the same as this one:
15	The defendant in that case had been arrested
16	for selling narcotics to an informant who had been
17	supplied previously with marked money. The sale of
18	the narcotics took place on the 23rd of April, and the
19	particular year, I think it was 1959. She was
20	arrested I think it was a she, I am not sure
21	the defendant was arrested the evening of the 23rd of
22	April. I believe there was a search conducted of the
23	immediate winity
24	THE COURT: One moment, excuse me.

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MR. BERGMAN: Now, at the time they arrested the defendant, they conducted a search of the premises of the defendant and they did not find the marked money. That same evening of the arrest, the 23rd of April, they seized the vehicle on the basis of the forfeiture statutes, which the government has cited in connection with this case.

THE COURT: How do we know why the government seized the vehicle, shouldn't that be made clear.

MR. BERGMAN: I think so, by all means, and the government is prepared to go forward with its witnesses to establish as if there were an arrest, but in either event to establish the probable cause for the seizure of the vehicle, in fact it is --

THE COURT: How about the retention of the vehicle during that entire period, even after the complaint was dismissed, what was the purpose in retaining it after the complaint was dismissed.

MR. BERGMAN: That I suppose goes to the question of the prosecutorial discretion in this case, when Mauro was arrested and brought in along with Biltz and Stoppiello, the United States Attorney's office determined that at the time of the prosecution, given the unwillingness of Stoppiello to testify --

THE COURT: Are you prepared to offer testimony

on what evidence the government had, aside from what has already appeared in the record.

MR. BERGMAN: Yes, your Honor, I'm prepared right now.

THE COURT: And the reason for the seizure.

MR. BERGMAH: Yes, your Honor.

MR. SCHACHER: May I say one thing, your Honor.

TYE COURT: Yes.

I have got to say one thing about what you have done to date, Mr. Schacher:

It may very well be that you waived your right to suppress by failing to make the motion, and I will take evidence on that. Now I don't know, of course, when the hills were seized, but Mr. Mauro certainly knew about them -- is that right -- in March.

MR. BERG'AN: From the car?

MR. SCHACHER: Your Honor, he never knew about these things.

THE COURT: He never knew the bills were there.

MR. SCHACHER: No, your Honor, he never knew they were seized.

MR. BERGMAN: If your Honor will listen to the last tape which is in this case --

THE COURT: I listened to all the tapes and about the steering column and that he had to pay \$150

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to repair the car, but there is nothing in that evidence as far as I recall that says the money, the money was in the steering wheel.

MR. SCHACHER: Your Honor, may I just make a reference to one case which your Honor cited yesterday, Artiari.

THE COURT: I had read all of them, I read

Cooper against California this morning, I read Preston,

it is not the basis ---

MR. SCHACHER: I want to point out one thing, sir, that after they broke into the premises and they searched one floor they then went to the second floor and into the basement, and the government there held—the Court there held that by going onto the second floor and into the basement they were then embarking upon a general exploratory search and that which they found as a result was completely improper.

THE COURT: Did you also read all the cases that say that you must distinguish the search of a house from the search of an automobile.

MR. SCHACHER: Yes, your Honor, but there is no emergency situation here, your Honor, where they couldn't get a search warrant. All these cases where they have a prompt search speak about freegency measure.

THE COURT: The same standard doesn't apply
to a house as it applies to an automobile, it is not
the same standard you apply to an automobile as applied
to a house.

MR. SCHACHER: You are right, your Honor.

THE COURT: That is the old theory of a man's house being a man's palace doesn't apply to a car, a car is a method of getting around, it is mobile, and the law recognizes --

MR. SCHACHER: You have a different situation here, you have the car in their possession even after the United States Magistrate dismissed the complaint.

THE COURT: I want to call another thing to your attention:

If the government were aware of your objection, they would have made application to have the hearing first and not to pick a jury, and thus to afford them the opportunity of appeal from any adverse ruling.

MR. SCHACHER: Your Honor, I didn't know about these moneys in the steering wheel column.

THE COURT: I don't know about that, I'm not so sure.

MR. SCHACHER: I will take an oath on that.

THE COURT: I am not so sure, maybe you didn't know, but I think the other question is whether you had

the opportunity to learn and the other question is whether your client knew.

It is almost inconceivable that he did not know there was conterfeit money in the steering column of his car, his car, a car owned by him and he didn't know about it.

MR. SCHACHER: Your Honor, if I had been made aware of it, I think I know enough about the search and seizure law to make a proper application.

THE COURT: I do know this, he knew his steering column was disassembled, he knew he had to pay \$150 to repair it.

MR. SCHACHER: He wasn't present when it was being broken up, he had to put the car in working order, sir, and that doesn't mean to say that he knew there was counterfeit money there, sir.

THE COURT: You don't think that I can reasonably infer that if counterfeit money were found in that steering wheel of his car that he would know about it, that I can't infer that.

MR. SCHACHER: Two months after it is taken, your Honor.

THE COURT: Six years.

MR. SCHACHER: He didn't know about it, sir, no, sir.

MR. SCHACHER: Your Honor, according to Stoppiello's

testimony he had testified in this Courtroom here that he had been instrumental in framing certain people with the help of officers, your Honor, and I am not saying it happened here but the inference can be made quite clear that he wasn't --

THE COURT: You say Mr. Stoppiello planted ten bills in Mr. Mauro's car.

MR. SCHACHER: I don't know, maybe they weren't there, maybe they were, sir, I have no way of knowing.

THE COURT: You have a great imagination, Mr. Schacher.

MR. SCHACHER: Your Honor, if I had known of it you can be sure of one thing, I would have brought the motion on.

THE COURT: Well, I will hear the tapes again.

You heard the tapes in January -- you were

offered to hear the tapes when?

MR. BERGMAN: January 24th, the 24th is when he heard them.

THE COURT: That is when he was offered the opportunity to hear them, and were they ever offered to Mr. Rosenbaum.

MR. SCHACHER: No, I was the first one who made application and that was after I made the application that I found out about these tapes.

THE COURT: All right.

MR. SCHACHER: I had a very short working period of time.

MR. BERGMAN: As far as the existence of the tapes knowledge of the defense of the existence of the tapes in this case, in an examination of the plea before Judge Dooling, and this was on July 14th, and part of the maeter before Judge Dooling was the tape recording, and it was in view of that fact that the government was concerned as to the safety of Mr. Stoppiello —

THE COURT: When was the first reference made, aside from the tapes, to the presence of the counterfeit bills in the steering wheel.

MR. BERGMAN: As between you and Mr. Schacher.

THE COURT: As between you and the defendant or any other lawyer representing him, he is bound by what you told Mr. Rosenbaum, too.

MR. SCHACHER: Your Honor, I will go on record by stating --

MR. BERGMAN: I don't recall telling Mr.

Rosenbaum anything about seizing this money in the steering column, and I don't think I mentioned it to Mr. Schacher.

MR. SCHACHER: I'm sure you did not, sir.

THE COURT: I know one thing, that those bills

were offered for identification --

MR. BERGMAN: No, they weren't.

THE COURT: They weren't, weren't they marked for identification.

MR. BERGMAN: These have not been marked for identification yet.

THE COURT: I thought they were.

MR. BERGMAN: Mr. Schacher was provided with a copy of the report of Agent Viggiano relating to the events of March 3rd, now that --

MR. SCHACHER: That'was during the course of the trial.

MR. BERGMAN: Yes, that was during the course of the trial.

I won't represent to your Honor that I --

THE COURT: I will tell you this, we are going on with Mr. O'Connor's testimony at 10 o'clock because the jury is here. I may have to call a recess and take any other testimony concerning whether the car was seized for forfeiture and why it was retained, you know the government has the burden of showing that the seizure was proper.

(Continued on next page.)

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EK:pc	1	MR. BERGMAN: I am aware of that, your Honor.
take 1/3	2	THE COURT: See if the jury is here.
	3	All right, put whatever witness you have on,
L	4	on the question of forfeiture.
	5	MR. BERGMAN: Your Honor, I would like to
	6	introduce the files through some custodian witnesses
	7	that Customs has regarding these, although I haven't
	8	had the chance to look through them.
	9	THE COURT: All right, all right, these are
	10	files kept by Customs.
	11	MR. BERGMAN: Yes, sir, in connection with the
	12	seizure.
	13	THE COURT: Did Customs seize the car?
	14	MR. BERGMAN: No, the Secret Service, which is
	15	a division of the Department of the Treasury, it
	16	seized the car, then they turned it over to the sister
	17	bureau.
	18	THE COURT: They did turn it over?
	19	MR. BERGMAN: Yes, sir, it was turned over.
	20	THE COURT: That is an indication that the
	21	forfeiture was intended.
	22	All right, go ahead.
*	23	MR. BERGMAN: Thank you, thank you, you
1	24	Honor.
	25	Mr. Rinaldi.

2	RICHARD RINALDI, called as a
3	withess on behalf of the Government, having been
4	duly sworn by the Clerk of the Court, testified as
5	follows:
6	MR. BERGMAN: I just got this, your Honor, and
7	may I have this marked?
8	THE CLERK: File marked as Government's exhibit
9	36 for identification.
10	THE COURT: Are all of these files being
11	offered?
12	MR. BERGMAN: Yes.
13	THE COURT: Maybe Mr. Schacher will concede that
14	these are files regularly kept by Customs?
15	MR. SCHACHER: That portion I will concede,
16	your Honor.
17	THE COURT: Why have them marked?
18	MR. BERGMAN: Thank you, thank you, Mr.
19	Rinaldi.
20	(The witness was excused.)
21	THE COURT: All right.
22	Are these all the files?
23	MR. SCHACHER: Your Honor, may I approach the
24	bench, please, sir?
ACCOUNTS OF	。

THE COURT: Sure.

THE COURT . I misinterpreted that.

After the jury comes in and we have gone into the trial, at an appropriate time I would like you to turn these files over to Mr. Schacher and let him look at them so he knows what is in evidence.

MR. SCHACHER: I would like to look at them first.

THE COURT: All right.

MR. BERGMAN: I just want to get a description of these files from the witness.

THE COURT: All right.

MR. BERGMAN: Government's exhibit 36, is a file from the Fines, Penalty and Forfeiture Staff of the Bureau of Customs.

THE COURT: May I see that file?

MR. BFRGMAN: Government's exhibit 37 in evidence is the file from the Public Stores, Sales and Seizure section of the United States Bureau of Customs.

THE COURT: Both lawyers might be interested in the basis for the seizure as set forth in the memorandum of April 11th:

"At this time Louis Stoppiello stated that on the same date, the violator-petitioner did deliver the counterfeit currency to him, Stoppiello, in the

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petitioner's 1967 Ford."

Now, there is only one other question that arises in my mind:

Is there an obligation upon the Government to start proceedings, administratively or in the District Court, to complete the forfeiture?

MR. SCHACHER: Your Honor, may I be heard for a moment, please, sir?

THE COURT: Yes.

MR. SCHACHER: According to this letter dated April 24, 1972, I think it has reference to the Petitioner, and it is the date of the forfeiture proceeding, it was March 13, 1972 --

THE COURT: Well, that is the time that Mr. Rosenbaum on behalf of Mr. Mauro filed the petition, I have got it right in front of me.

MR. SCHACHER: I'm BOTTY.

THE COURT: And in this particular petition, it says this:

"Confiscation was predicated upon the allegation that said vehicle was used for illegal purposes."

I think both lawyers ought to look at this.

(continued on the next page.)

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MR. SCHACHER: Your Honor, may I go on record as saying I called Mr. Rosenbaum's office --

THE COURT: Here is a very significant thing, this is March, after they revealed it. It talks about the money being concealed in the steering column.

Here's one on January 6, 1972, which states

Joseph Mauro operated the subject vehicle, was

arrested for possession of counterfeit money. The

abovementioned defendant was driving the subject

vehicle on January 4, 1972 when he met with an

undercover agent of this service and delivered

counterfeit money.

MR. SCHACHER: By whom --

THE COURT: Mr. Mauro advised at the time of arrest he was rightful owner of subject vehicle.

Attached a copy of Customs forms and numbers are given, and selective service forms 1626 and necessary additional copies of which were delivered to the seizure room along with the subject vehicle.

In the event the subject vehicle is forfeited to the United States Government, it would be desired for use by this service and should be turned over to special agent in charge and his name -This is a bad copy.

MR. BERGMAN: Is it Whitaker?

THE COURT: United States Secret Service,
90 Church Street, New York. Whitaker.

In a report of seizure, it says it was seized for violation of 18 U.S.C. Section 472 and the estimate value of it is \$1500.

Well, the file indicates that the Government seized it for forfeiture.

Let's go on with the case.

ramiliarize yourself with the files at the appropriate time. I will hear argument if you have no other testimony then what you already have.

MR. BERGMAN: If you are concerned as to the time element in the case as to whether the Government was bound to institute forfeiture procedures, I would like to make a phone call to see if --

THE COURT: That is what troubles me at the moment.

Are we ready?

MR. BERGMAN: I have one additional question to ask the quewitness before cross examination.

THE COURT: You mean Mr. O'Conner?

MR. BERGMAN: Yes.

THE COURT: All right, seat the jury. We had

concern for Stoppiello's safety, did issue a warning to Mr. Mauro.

THE COURT: I am not going to allow that to

MR. SCHACHER: NO.

THE COURT: I won't allow that.

MR. BERGMAN: Your Honor, I suppose it could always be argued by a defendant that nothing ever happened to him. He was never hurt or injured or beat up. And therefore, the threat the Government claims to have been made were not really threats but just loose talk.

I think the GOvernment should be allowed to show, at the very least -- well, no, I will withdraw the offer. I have enough of a case to deal with it.

THE COURT: I suppose you want to go into the question of admissibility of the bills found in the car?

MR. BERGMAN: Yes, your Honor.

THE COURT: All right. What do you have on the requirement once you seize the car?

MR. BERGMAN: I'm sorry?

THE COURT: What do you have on that?

MR. BERGMAN: As to the requirement?

THE COURT: The Government's requirement to proceed to seek forfeiture or hold the car indefinitely.

MR. BERGMAN: May I call Mr. Stewart, cocounsel? I see he is in the courtroom now.

THE COURT: Oh, yes. Here we have Mr. Stewart, who tried a case before me on forfeiture.

All right.

MR. STEWART: The question is, is there an affirmative requirement that the Government go forward?

THE COURT: Yes.

MR. STEWART: I have done an extremely quick job of researching that issue. There is an outside limitation period of five years after which time the Government cannot proceed against the car.

THE COURT: The statute of limitations bar?

MR. STEWART: Yes.

THE COURT: Nothing else in the statute that requires the Government to proceed after seizure?

MR. STEWART: The only case I have found that is remotely on point is the case of United States against 37 Photographs, a Supreme Court case which required the Government to proceed against allegedly obscene --

THE COURT: I am familiar with those cases.

MR. STEWART: That is within 14 days.

THE COURT: I am familiar. It has no

application here.

Talking about a seizure that might affect

Pirst Amendment rights requiring the Government to

give a hearing immediately or with all due speed.

That does not apply to forfeiture cases.

MR. STEWART: I agree. Section 1604 of Title
19 requires the United States Attorney to proceed
without delay against any seized vehicle or any
vehicle seized under the Customs laws.

Vehicle seized under Title 49 are proceeded against in accordance with the provisions of Title 19.

Yet, under that section, 1604, I haven't found any cases that require the Government to go forward within any certain period of time.

THE COURT: Is there any case that requires some affirmative action by the owner of the vehicle that might accelerate the Government's time to forfeiture?

In other words, is there any case that says that the owner must say give me my car back or proceed?

MR. STEWART: It would depend on what notice the owner had of the seizure of the car, I would think.

THE COURT: In the case that was tried before me, I think it was Jones?

MR. STEWART: Yes.

THE COURT: I had to wait for him to serve his term to try it.

MR. STEWART: That is correct, your Honor.

THE COURT: Publication was quite early after the -- he was arrested.

MR. STEWART: But your Honor found he never received notice of that.

THE COURT: I remember the case. I found his right to due process was violated. I found that the Government had the right to receive the car anyway, or at least I found he did use the car to possess the heroin. He had no right to damages.

MR. STEWART: I think Section 1604 requires -it says without delay. That is the language of the
statute. Unless there are countervailing reasons
for not proceeding.

I don't know what the facts are in this case, but if the United States Attorney decides there are facts which would warrant him in not proceeding

with the forfeiture, then there would have to be no requirement that he does proceed. THE COUPT. Judge CAtoggio dismissed this complaint when? MR. SCHACHER: February. MR. BERGMAN: On motion of the Government it was dismissed on February 15th. THE COURT: February 15th? MR. BERGMAN: I believe that is it. MR. SCHACHER: Yes. (continued on the next page.) :7

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MR. BERGMAN: I might say, of course, it is self-serving, but the dismissal of the complaint against Mauro, I suppose, was made more in consideration of the then newly enacted six month rule than anything else.

MR. SCHACHER: I do not see what that has to do with the six month rule.

MR. BERGMAN: All I am trying to point out to the Court, Mr. Schacher, is that the dismissal of the complaint ought not to be that closely or directly related to the vehicle itself or should not be taken by the Court as an indication by the United States Attorney's Office that there was no basis upon which the vehicle could not be forfeited.

THE COURT: Porfeiture may have and often does proceed without a criminal proceeding. I have seen that happen.

MR. BERGMAN: I am pointing out to your Honor—
THE COURT: So it is not necessary that there
be a determination of the criminal proceedings in
order to determine whether forfeiture is justified.
The Government could have in this case proceeded with
forfeiture and certainly after they found the bills
there was another reason to forfeit.

It is just strange to me why the Government

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on a petition decided to turn the vehicle back.

Maybe they did not think it was worthwhile.

T can understand where the termination by the magistrate has no bearing as to whether the Government had the right to retain the car for purposes of forfeiture.

Do you have anybody that can offer a reason for the record?

MR. BERGMAN: Why the car was retained -- why the forfeiture proceedings were instituted?

It certainly would have been retained up to sometime -- up to the time the complaint was still outstanding against Mauro. That would have been February 15. I do recall from the very inception of this case, and your Honor I suppose must appreciate my first day in the office was January 5, 1972, it was the first day I was an Assistant United States Attorney, and it was the first case I ever got.

Mr. Rosenbaum called me on the phone, it must have been January 6 or 7, and he asked me could we get the car back.

I guess I have to plead guilty to being naive at that time. He explained to me that Mr. Mauro was out of work, this was the only means by which he could possibly earn any sort of livelihood. That

there were unemployment insurance books in the car and could he get these back and he had a whole host of things.

I took him at face value at that time,

Mr. Rosenbaum, and I believe I had conversations with

the agents as to whether or not we could return the

vehicle or whether we could not.

My general impression that I got at that time, and I suppose I was acting as the intermediary for Mr. Rosenbaum, between his client and the United States Secret Service or Bureau of Customs, was this was an entire bureaucratic hassle to get this car back and I wound up suggesting to Mr. Rosenbaum that he ought to petition and that is what I understood the proceeding to be.

I presume, thereafter, he did that and he did petition.

The case at that time, and I am talking about the end of February, beginning of March, Stoppiello had already been indicted, I think even before he was indicted.

MR. SCHACHER: He was indicted in January.

THE COURT: No, he was not indicted. There
was a complaint filed which was dismissed, as I
understand.

MR. SCHACHER: Please forgive me, I withdraw my statement.

THE COURT: He was indicted in July.

MR. SCHACHER: Mauro was indicted in July.

THE COURT: That is what I mean.

MR. BERGMAN: Stoppiello had been speaking with the agents and on one occasion with me up through January or February and March also, but he had been speaking to us upon our representation that we were not going to put him in the position where his disclosures would become available to the defendant.

In other words, the defendant would not find out that in effect Louie Stoppiello was "squealing."

I had a lengthly discussion in February between him and his attorney, even I think before he was indicted. He knew he was to be indicted and he gave me personal information of his loans to Mr. Mauro at that time.

And then thereafter it was just a matter of
Louis Stoppiello deciding in his own mind that having,
I suppose, enough confidence in the United States
Attorney's Office, that he could testify in the
Grand Jury safely against Mauro.

That did not come about until the FBI managed to obtain these tape recordings in June and July.

The period between that time, our position

vis a vis Mauro, or at least the United States Office

position was here is a man who at that time the

Government had no evidence to go against. My personal

feeling was as long as that was the case there was

no reason to further harass him by keeping his car.

Whether or not I was informed of the discovery of the bills in the car shortly after they were discovered -- and I might say, your Honor, my reaction to the agent at that time was just the same that you had yesterday.

I said, "Why didn't you call me up and ask for a warrant before you seized those bills."

I was under the impression for quite awhile that evidence would not be admissible in this case. It was only recently I found the White case which I cited to your Honor.

THE COURT: Which had nothing to do with it.

MR. BERGMAN: I thought it did but when your

Honor said it did not I found a better line of

cases.

In any event, the car was given back to the man, I suppose not out of any legitimate prosecutorial purpose but simply because we had no case against the fellow at that time and he ought to get his car

back, that is all.

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THE COURT: May I have that customs file once more?

MR. SCHACHER: Your Honor, apropos to what was said pursuant to a letter dated April 24, 1972, by the Department of Treasury, Bureau of Customs, I would like to have this paragraph incorporated:

After consideration of the facts and circumstances involved relief from forfeiture is granted on condition the storage charges of \$160 are paid.

THE COURT: I did read the letter of January 6, 1972, and the form attached.

MR. SCHACHER: No, I have not seen it.

THE COURT: Suppose you go over the file and I will hear argument on it. We will take a brief recess but I will sit here because I would like to read the proceedings before Judge Judd on January 7, 1974, and on January 22, 1974.

(A brief recess was taken.)

The COURT: Do you have the portion of either of the thouse that the defendant knew in June, 1972,

AR BERGMAN: Yet, your Honor

THE COURT. Where is that?

MR. BERGMAN: On page 85, your Honor, there is a discussion about Whitaker, where the discussion about Whitaker begins.

THE COURT: Oh, yes, page 85.

MR. BERGMAN: I would like to play it --

THE COURT: On page 85 Mr. Mauro says:

"Your name is on a piece of paper saying you told them that they were in the column.

(continued next page.)

PK/d1 1 3/2am	"Were in the column?
2	"MR. MAURO: Steering column."
3	Stoppiello says, "I don't know this guy
4	Whitaker. I've heard of him though.
5	"MR. MAURO: I saw it, I read it.
6	"MR. STOPPIELLO: Your read it?"
7	MR. SCHACHER: What page is that?
8	THE COURT: Page 85 and 86.
9	"MR. STOPPIELLO: You read it?
10	"MR, MAURO: The Bureau of Customs had it.
11	*MR. STOPPIELLO: Bureau of Customs? What had
i2	that got to do with the Bureau of Customs?"
13	Then Mr. Stoppiello: "Heh?
14	"MR. LAURO: Seizures and penalties involved."
15	Further down on page 86:
16	"MR. STOPPIELLO: Well then I have heard of
17	him.
18	"MR. MAURO: My lawyer too.
. 9	"MR. STOPPIELLO: Oh, your lawyer saw it?
26	"MR. MAURO: And I didn't believe him until
á'	I went down to get the car.
::	Is there any doubt that both the defendant and
	his lawyer, Mr. Rosenbaum knew that these bills
24	were selzed from the car?

MR. SCHACKER: Well, your Honor, there is

nothing that mentions bills in the car, your Honor.

THE COURT: Let me ask you what you think

Mr. Mauro was referring to on page 85 when he says,

"You told them that, they were in the column," what?

MR. SCHACHER: The column of what, your Honor?

THE COURT: "Mr. Stoppiello: Were in the column?

"MR. MAURO: Steering column."

MR. SCHACHER: There is still nothing about bills, your Honor.

THE COURT: I know it did not say the counterfeit bills, as a matter of fact he did not say how
many. He did not say I am talking about five counterfeit bills, he did not have to, they both know what
they were talking about.

MR. SCHACHER: It is my contention we are assuming something like that.

THE COURT: Of course, you would assume that.

You want it spelled out for you, you want to hit you in the eyes before you believe it.

MR. SCHACHER: I think something more concrete than a statement like that --

THE COURT: Of course, you would like it and
I would like it too, but we do not. The question
is what we have.

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1	He knew far in advance that the Government
2	was going to use this in this case.
3	MR. SCHACHER: I am going to pose this question
4	your Honor.
5	THE COURT: I beg your pardon?
6	MR. SCHACHER: I will raise this issue, your
7	Honor.
8	Assuming, which I am not conceding that to be
9	a fact, this conversation took place in June of 1972,
10	the arrest took place on January 4, 1972.
11	It is my contention that any conversation at
12	that time along a conspiratorial line is improper.
13	THE COURT: I am not talking about that.
14	MP. SCHACHER: I am raising it, sir.
15	THE COURT: Of course, you are wrong on that.
16	MR. SCHACHER: It will not be the first time,
17	sįr.
18	THE COURT: But let us assume that it was
19	inaumissible, had no place in the trial. We are talking
20	about whether the defendant had reason to believe that
21	and covernment was coing to offic these bills.
.2	Float you said he did not know they were
23	You just thought they took the column apart
	and the require on y because the Government has
25	the same was a like to keep busy, so they

asked agents to take columns apart. Of course he knew that these bills were seized, he certainly knew it in July.

MR. BERGMAN: That conversation was taking place July 12.

THE COURT: July 12, 1972, and his lawyer knew it, Mr. Rosenbaum. I am not going to ask you whether you discussed it with him, Mr. Schacher, because that would be trespassing on your lawyer-client relationship, and do not tell me.

MR. SCHACHER: Because of that line, I will not make any statement.

THE COURT: Don't you dare.

I will say if he did not you have a very secretive client.

MR. SCHACHER: Most clients are.

THE COURT: Mr. Rosenbaum kept it to himself, and from a lawyer to whom he was handing over the case and he did not tell him about it?

The fact is it does not matter. Mr. Rosenbaum was in the case and he is bound by what Mr. Rosenbaum knew too.

MR. SCHACHER: I wonder if Mr. Rosenbaum informed Mr. Mauro of that. Based on my short conversation on the telephone with his secretary and

have said to my client or his client at that time.

The man always had a conference and never returned telephone calls.

THE COURT: Tell me when you are ready to argue the inadmissibility. I am ready to rule on it.

Have you gone over the file, have you satisfied yourself as to it?

MR. BERGMAN: There is one other file I do not think your Honor has looked at, it is the Customs file.

So far as I am concerned, I think it is pretty well a duplicate of what is in the other file.

MR. SCHACHER: Your Honor, may I be heard with reference to the transcript? This is not an actual statement of his personal knowledge. His conversation there is that what he read, what happened in the newspaper, sir, and the conversation pertains to that and not to any personal knowledge of what might have been in the steering wheel or steering column.

You will admit, you read the transcript, there is reference to a newspaper report.

THE COURT: And what is the difference you are trying to make?

MR. SCHACHER: Your Honor, there is a difference between reading something and knowing something.

THE COURT: What difference does it make?

There are many things because we read that you and I know. I know that George Washington was the first President of the United States because I read it. I never saw him but I know it.

What is knowledge? Do you think knowledge is only what people actually see?

MR. SCHACHER: Is it accurate knowledge all the time, your Honor?

THE COURT: I think it is pretty accurate.

I do not think anybody will dispute that George Washinton was the first President of the United States.

I think that is pretty accurate.

Will you dispute that?

MR. SCHACHER: Your Honor, I will fail to make a statement on that score. But I am talking as to what nappened here in the transcript, your Honor, and what it indicated.

There is a newspaper reference being made not to the actual thing, your Honor, it is what he read in the newspaper.

(continued next page.)

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THE COURT: We are talking about the failure of the defendant to move to suppress, that is all I am talking about.

What difference does it make how he gained knowledge that the Government was going to use these bills in the trial?

MR. SCHACHER: Your Honor, if you read the transcript, your Honor, you will see for yourself it makes reference to a newspaper report not to an actual finding of these bills in the steering wheel per so.

THE COURT: Doesn't it talk about the report
of the Bureau of Customs, that the Bureau of Customs
found the bills?

MR. SCHACHER: I never had the Bureau of Customs report, your Honor.

THE COURT: Well, he says he and his lawyers saw the report. He did not believe that they found the money in the steering wheel.

MR. SCHACHER: That is what they said. There is more reason for it.

THE COURT: He does not say it in that lan-

MR. SCHACHER: Sir, the fact remains he does not believe it.

THE COURT: Go to the next point. I am ready to decide this on the merits.

MR. BERGMAN: Let me make one statement. On page 90, the last page of the transcript, one of the last things said by the defendant, "The fact that I seen your name on a piece of paper makes you dead."

MR. SCHACHER: What has that to do with the other report?

MR. BERGMAN: It is just in further --

THE COURT: I think it just indicates the accuracy of the information that Mr. Stoppiello was giving him.

If you have been following this case it indicates that when Mr. Stoppiello told him that there were bills hidden in the steering column, they opened the steering column and he said, "You gave information, I read the report, they found the money there, you are dead."

MR. SCHACHER: Your Honor, you are putting an interpretation upon that which is not really in fact so.

THE COURT: I am obliged to do it. I am the trial judge trying the issues.

MR. SCHACHER: I am not denying that, your Honor, but we could differ on opinions.

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you see I have the right to make reasonable findings based on the circumstantial evidence and I am telling you what I find.

MR. Mauro knew in 1972 that the Government had these bills. His lawyer knew in 1972 that the bills in all probability would be used in the trial of the case. It was a counterfeiting case.

One of the counts charges he was in possession of these bills.

MR. BERGMAN: Well, these particular bilis are not the subject of the indictment.

MR. SCHACHER: They are not the subject of the indictment.

THE COURT: Oh, they are not?

MR. BERGHAN: No, your Honor.

MR. SCHACHER: That is why I cannot understand the whole thing, sir.

ment you pounce on it and say that was your argument
all along. You have been doing that all through the

MR. SCHACHER: I think I have a right if it

THE COURT: That is another argument and Mr. Schacher will seize on it.

How is it relevant to the count? I was under the impression it related to a count in the indictment.

MR. BERGMAN: There are basically three criminal transactions involved. One of course if the conspiracy. There is a charge that between the dates of the conspiracy he also transferred and delivered 10 United States counterfeit bills.

THE COURT: What is the term of this conspiracy?

MR. SCHACHER: From the beginning of October,

October 1 to January 4, 1972.

MR. BERGMAN: January 4, 1972.

I appreciate the echo.

MR. SCHACHER: I thought you would say it is an echo, sir.

MR. BERGMAN: Now, the 10 bills which relate to that count are Government bills --

THE COURT: Let me read the count very carefully please.

It is pertinent to the fourth count, that he concealed these bills as part of this conspiracy.

MR. BERGMAN: I suppose so.

THE COURT: What do you mean you suppose so?

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What other argument can you make for it?

MR. BERGMAN: I think it is pertinent, yes, of course, it is in the conspiracy count.

THE COURT: The other argument being they are similar crimes.

MR. BERGMAN: I would point out that of all the bills thus far in evidence that consists of the approximately 500 bills and the 10 bills there are only five serial numbers represented in that entire batch of bills.

I do not remember off hand but they coincide precisely with the serial numbers found.

(continued next page.)

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THE COURT: He possessed it on January 4 and concealed it on January 4. Leave alone the argument on the question as to whether you waived your right to suppress under Rule 41-E. Why isn't this admissible as a seizure, as a valid seizure through a lawful custody obtained by the Government in the forfeiture procedure?

MR. SCHACHER: Well, first of all, your Honor,
I maintain that there was not a lawful custody of
this automobile and that the seizure was not a proper
procedure, sir, in view of the fact that, number one,
as it came out this morning, the Government did not
proceed with undue delay in effecting their forfeiture
proceedings.

Number two, the complaint had been dismissed a long time prior to any search being made of this car.

Number three, I maintain it was not a search within the normal purview of the search but more or less a discovery, a general discovery and this only came about after Mr. Stoppiello made the remark back in March to the agents or the authorities that you could find something in the automobile. There is no proof here whatsoever this car was under the supervision or protection of the Government. It was put in

a garage I understand on an open lot where anybody could get at the car.

of time from the time they first got the car and if they wanted to make a search at that time they could have done so. This partakes more of a general over-all situation, not just a mere search.

THE COURT: I find the bills seized -- what was the date of the seizure?

MR. BERGMAN: March 3rd.

THE COURT: (Continuing) -- March 3rd was a lawful seizure made in a lawful search.

I find that the Government lawfully seized the car in which the defendant was found at the time of arrest and that he had proof that this car was being used in transferring the 500 counterfeit bills to Mr. Stoppiello.

I find that the only real issue is whether the Covernment failed to proceed with the forfeiture procedure with undue delay. I believe that the owner has a right to petition for reclamation and the owner failed to lo it until March 13 -- as I recall --

BERGMAN. Ma. ch. 13, your Honor.

COUNT: I was right, the petition is dated

3 March 13.

I find that this is an on-going investigation and the delay until the date of seizure was not an undue delay.

I find that that the return of the car, the fact of the return of the car, is irrelevant. As a matter of fact, it might have even been imprudent but it was a decision to be made by the Bureau of Customs and it may very well be that the value of the car did not warrant the continued custody and the forfeiture procedure but, for whatever reason, it was solely within their discretion to return it and the fact of return does not prove that the car was not subject to forfeiture. As a matter of fact, the proof is overwhelming to the contrary. The Government had every right to forfeit this car.

(Continued on next page.)

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MR. SCHACHER: Your Honor, if I may be heard for a moment?

THE COURT: I will give you a chance.

There is a serious question as to whether the defendant proceeded properly or timely under Rule 41(e) of the Federal Rules of Criminal Procedure.

The defendant has 10 days to move, 10 days from the date of the filing of the indictment. His lawyer, Mr. Rosenbaum, was in charge of the case at the time and was fully familiar with the seizure, knew the bills were seized, and had every reason to believe that the bills would be offered in evidence.

He failed to do it.

there was enough in the tapes that were played on or about January 24 to indicate that the bills were found in the steering column and in all probability would be used to support the Government's case.

I find that the defendant's motion in mid-trial which incidentally would result in the forfeiture of the Government's right to appeal in the event of an adverse ruling, is untimely.

MR. SCHACHER: Your Honor, if I may be heard:

It seems to me that your Honor is placing the
onus on the defendant or his then attorney for moving

with undue delay and to petition for the car being returned, but by the same token, in view of Mr. Stewart remarks, it seems obvious that the Government, too, acted with undue delay.

Secondly, I am quite certain that the Bureau of Customs would not have returned this car unless they had some conversation with the Assistant United States Attorney then in charge, or his office, and in view of the letter of April 24, 1972, they themselves, in that letter said, "In view of the surrounding circumstances, we are returning your car to you on the payment of \$160," I am quite certain that would not have been done unless they had the approval of the authorities of the Government to do so.

And most important of all, your Honor, if
we take the position that the car was in the custody
of the United States Government at the time of this
alleged — at the time they found the alleged \$10
bills, the Government had the car for an ample period
of time within which they could have obtained a
search warrant to make a search of the car.

It is my contention that this is not a mere search, but just that there was a general investigatory search looking for evidence and that they had had ample opportunity, two months had elapsed from the time they first got the car until the time they allegedly found the bills, and in that period of time, since it was under their jurisdiction, they could have proceeded by way of search warrant, sir., but they failed to do so.

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THE COURT: I would just make one observation, and I won't ask for rebuttal:

Delay is of no significance if the Government had lawful custody of the car. If this car were within the control of the Government lawfully, if this car were forfeited, the Government had title to it.

Let us take a more extreme case, just take
the situation where two or three or five years later
there was a repair to this car, the steering column,
and it was disabled for that reason, and the Government found that there were bills in the car, and
the case was on trial at that time, two or three
years later, and the Government rushed into the
Courthouse and said, Look what I have found, the
column wasn't disturbed from the time we took it
from Mr. Maure s possession to this date, and this
is two or three years later, well, I would have
admitted the evidence.

The lapse of time means nothing. The real

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question is:

Was there justification for the Government to take the car;

The next question is: Was there justification for the Government to retain the car until the date of search in March 1972, and I have made a finding that there was no undue delay and therefore there was justification.

Now that makes the search valid on the date of March -- again, was it March 3, was it?

MR. BERGMAN: Yes, sir.

THE COURT: March 3, 1972, and it makes the seizure valid.

You have an exception.

MR. SCHACHER: If you read the Caddy case --

THE COURT: I read it.

MR. SCHACHER: And also the --

THE COURT: I won't hear any further argument,
I read Caddy, I read Cooper, and I read Coolidge,
I read Marsarski -- anything else?

MR. SCHACHER: In the Cooper case especially -THE COURT: I won't hear argument on it, I
read the same as you do and maybe more times

MR. SCHACHER: It takes me a long time, too,

because it takes me longer, but I read it.

Judge.

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THE COURT: I won't have you give me your version of what the case stands for. I read English.

MR. SCHACHER: I wasn't trying to give you my version.

THE COURT: Seat the jury.

MR. SCHACHER: I am just trying to argue the matters.

THE COURT: We have had argument.

· MR. SCHACHER: May I respectfully except.

THE COURT: Yes.

MR. SCHACHER: Your Honor is taking the position even in view of what Mr. Stewart said, and that is that the Government did proceed with due haste?

THE COURT: I said the Government did not fail to proceed with due diligence under all the circumstances.

MR. SCHACHER: You said there was no undue delay on their part, is that it?

THE COURT: I will say it once more --

MR. SCHACHER: I got what your Honor said.

THE COURT: There was no undue delay on the part of the Government.

MR. SCHACHER: That is all

THE COURT: All right.

MR. SCHACHER: I got the gist of what you are saying.

THE COURT: Seat the jury.

MR. SCHACHER: Thank you very kindly, sir.

(At 11:20 o'clock a.m. the jury took it's place in the jury box.)

THE COURT: Call your next witness.

MR. BERGMAN: The Government calls
John Viggiano.

(continued next page.)

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THE COURT: I know you have been sworn, but let us do it again because it has been such a long time.

JOHN F. VIGGIANO, called as a witness on behalf of the Government, having been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. BERGMAN:

- Q Whom are you employed by, sir?
- A United States Secret Service.
- Q What capacity?
- A Special agent.
- Q For how long have you been a special agent?
- A Approximately three and a half years.
- Q What are your responsibilities as such?
- A The primary responsibility is protection of the President and Vice President. We also have other jurisdictions which include investigation of counterfeit currency.
- Now, did there come a time when you were involved in an investigation of counterfeit currency in January 24, 1972?
 - A Yes, sir, there did.
 - where was that?
 - In Brooklyn.
 - what did you do on that day?

1		Viggiano - direct 838
2	A	We arrested a number of people.
3	Q	Who was arrested on that day?
4	A	Special Agents Reilly and Sano, the defendant
5	Mr. Mauro, Mr.	Stoppiello and Mr. Seminaro.
6	Q	What was your capacity and responsibility
7	in particular or	that day?
8	A	I was the case agent.
9	Q	Were you a surveilling agent on that day?
10	Α ,	Yes, sir.
11	Q	Now you mentioned the arrest of Agent Reilly
12	and Agent Sano?	
13	A	Yes, sir.
14	O.	Were those simulated arrests?
15	A	Yes, they were.
16	Q	Was Sal Seminaro arrested on that day?
17	A	Yes, sir.
18	Q	Was that also a simulated arrest?
19	A	Yes, sir, it was.
20	Q	No proceedings were thereafter brought against
21	them?	
22	A	No.
23	Q	Now, was anything else seized on that day?
24	Α ,	Yes.

What was seized?

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Q.

2		
	A	Mr. Mauro's automobile.
3	Q	What kind of an automobile was that?
4	A	1967 Mustang.
5	Q	Where was it taken?
6	A	It was taken directly to the United States
7 Secret S	Service :	field office, the area outside.
8	Q	And what proceedings if any were involved
9 with the		obile thereafter?
10	A	The car was immediately searched and then some
11 forms we	re fille	ed out and it was handed over to Customs.
::	Q	Do you know what kind of a search was performed
13 at that	time?	
14		MR. SCHACHER: Objection, your Honor.
15		THE COURT: Objection sustained.
16	Q	Directing your attention to March 3, 1972,
Agent Vi	ggiano,	
.8	A	Yes.
19	Q	Did you have a meeting with Louis Stoppiello
that day	?	
::	A	Yes, sir.
	Q	Did you have a conversation with him?
23	A	Yes, I iid.
-	2	Following that conversation, what did you do?
25	A	I went to Max Ford's Garage on Varick Street

in New York City.

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What didyou do when you arrived there?

I identified myself to the person there, told A him that I would like to see a certain automobile, that certain automobile happened to be Mr. Mauro's car, and I went up to the car.

That was at Max Ford's Garage, the depository 0 of the vehicle?

I believe it was that vehicle, yes.

Now, what was the status of that vehicle at that time?

MR. SCHACHER: Objection, your Honor.

THE COURT: Objection sustained.

Did there come a time -- withdrawn.

Did there come a time when you searched that

vehicle further?

Yes. A

When was that? Q

On March 3, 1972.

Will you describe what you did, please?

Yes.

To the best of my recollection that type of car has a hub in the middle of the steering wheel. The steering wheel would be here (indicating), this would be a hub in the middle (indicating), I believe it is plastic, and I took that

2	out.	
3	¢	oid you use any tools?
4	Α :	believe I broke it with my hand.
5	0 1	What thereafter did you do?
6	A	found five counterfeit notes inside.
7		MR. BERGMAN: May we have this marked?
8		THE COURT: It may be marked.
9		THE CLERK: 5- \$10 bills marked as Government's
10	Exhibit	38 for Identification.
11	0	I show you Government's Exhibit 38 for Identi-
12	fication, can yo	u identify that exhibit?
13	A	Yes, I can.
14	Q	What is it?
15	A	These are the five counterfeit notes I found
16	secretoc in the	steering column.
17	0	How did you make that identification?
18		MR. SCHÄCHER: Objection, your Honor.
		THE COURT: Overruled, I will allow it.
19	A	I had my initial , JFV, plus the date, 3/3/72.
20.		BERGMAN: I offer it in evidence at
	a this po:	int, your Honor.
		MR. SCHACHER: Objection, your Honor.
•		THE COURT: Overruled.

They may be marked.

1	3	Viggiano
2	CROSS-EXAMINA	rion
3	BY MR. SCHACH	ER:
4	Q	Mr. Viggiano, when for the first time did you
5	meet Mr. Stop	piello?
6	A	January 4, 1972.
7	Q	And from January 4, 1972 up until March 3, 1972,
8	how many times	s did you see Mr. Stoppiello?
9	A	Approximately three times.
10	Q	Now, was this during the time that he was co-
11	operating with	the authorities?
12	A	Yes, sir.
13	Q	Now, he had been giving you information all this
14	time from Jan	mary 4th to March 3rd: Right?
15	λ	Yes, sir.
16	Q	And you personally had a conversation with him:
17	Right?	
18	A	Yes.
19	o	And you knew other people who also conferred with
20	him during the	at period of time: Right?
21	A	No, I was no, I was the one who had all the
22	conversations	
23	Q.	And where did these conversations take place,
24	sir?	
25	A	90 Church Street.

1,	4	Viggiano-cross
2	Q	How long a period of time would you say each
3	conversation	between you and Mr. Stoppiello took?
4	Λ	It is difficult to recollect, I would assume
5	they were	
6	0	I mean approximately?
7	λ	I would assume they were all different times but
8	0	More than five or tem minutes?
9	Α,	I would probably say ten, fifteen, twenty
10	minutes.	
11	Q/	Maybe more: Right?
12	*	Possibly.
13	. Q	Now, Mr. Viggianc, on January 4, 1972, you were
14	in charge of	this investigation; were you not?
15	A	I was the case agent.
اذ	Q	You were the case agent?
17	A	Yes.
18	0	Were you in the vicinity of Bay Parkway and
19	70th or 71st	Straet?
26	4 A	Yas, sir.
21	9	What time did you get there?
22		I would say, 1, 1:30.
	0	Did you see Mr. Mauro's car there?
	۸	At what time.
	2	When you got there?

1	5	Viggiano-cross
2	A	No.
3	ά,	When was the first time you saw Mr. Mauro's
4	car that day?	
5	A	About, at about 2:30, quarter to 3.
	Q .	At any time, sir, did you see any of the govern-
. 1	ment's exhibit	ts in the possession of Nr. Mauro?
6,	A	No, I didn't.
. ,	Q	Did you go over to Mr. Mauro's car?
10	λ	Yes, sir.
11	Q	Did you see any of those exhibits in his car at
12	that time?	
13	A	No, I didn't.
14	Q	Now, when you took Mr. Mauro's car on that
15	you searched	that car: Right, sir?
16	A	No, I wasn't the agent.
17	Q	Who searched the car at that time?
18	A	I am not quite sure, I believe it was Agent
19	Altice, I bel	ieve.
20	Q	But you conferred with him, did you not?
2	/ A	Yes, since I was the case agent.
22	Q/	Did you ask him if he found anything in Mr.
23	Mauro's car w	then he searched the car?
24	*	I can't remember if I asked him or the volunteered,
25	but he didn't	find anything.

1	6 Viggiano-cross
2	Q He did not find anything at all.
3	Now, after January 4, 1972, when for the next
4	time do you remember seeing Mr. Mauro's car?
5	A March 3, 1972.
6	Q Now, between January 4, 1972 and March 3, 1972,
7	where was that car during that period of time?
8	A When Customs takes a car I don't know what they
9	do with it originally, however
10	Q When did Customs take possession of that car?
11	A I believe it was January 4, 1972 or shortly
12	thereafter.
13	O They had possession during January after
!4	January 4th, right?
15	A To the best of my knowledge, Customs had.
16	Q What about Pebruary?
17	A To the best of my knowledge, Customs had.
18	Q They still had possession and custody of that
19	car: Right, is that correct?
20	A Yes, sir.
2	Q Up until March 3rd they still had?
22	A Customs had possession.
23	Q And where was this possession or custody of
. 24	the car at?
	To March it was at Max Fords, I don't know when

1	7	Viggiano-cross
2	else it was.	
3	Q	Did you ever check where that car was before
4	March 3rd?	
5	A	No, I never did.
6	Q	Can you tell this Court and jury the only way
7	this defendant	t could have gotten his car back during that
8	period of time	e?
9		MR. BERGMAN: Objection, your Honor.
10	-	THE COURT: Objection sustained.
11	Q	From January 4, 1972 up until March 3, 1972,
12	it is a defini	ite certainty that this defendant did not have
13	this car, did	he, sir?
14	A	To the best of my knowledge, he did not.
15	Q	Now, when you spoke you spoke with this de-
16	fendant; did	you not?
17	. A	Well, can you give me a time.
18	Q	After January 4, 1972.
19	A	I believe I did once, yes.
20	Q	And you asked him to cooperate with you; did
21	you not?	
22	A	Probably, I don't remember exactly.
23	Q	Did you ask him to make a deal with you'r
24	A	No.
25		MR. BERGMAN: Objection, your Honor.

1	8 Viggiano-cross		
2	THE COURT: Objection sustained.		
3	Q You did ask him to cooperate: Right?	-	
4	THE COURT: Is there an objection to that.		
5	MR. BERGMAN: No, I won't object.		
6	THE COURT: All right, go ahead.		
7	A No, I don't actually remember it, but it could		
8	be.		
9	Q Did he cooperate with you, sir?		
10	A Not to the best of my knowledge, no.		
11	Q Did he cooperate with any of the law enforcement	1	
12	agencies, if you know?		
13	MR. BERGMAN: That I will object to.		
14	THE COURT: Objection sustained.		
15	MR. SCHACHER: If he knows, your Honor.		
16	THE COURT: There was an objection, it is	1	
17	irrelevant to the issues of this case, the jury will		
18	disregard it.		
19	BY MR. SCHACHER:		
20	Q When you searched the car on March 3, 1972, was	-	
21	this defendant there with you at the time?		
22	No.		
23	Q Now, this location, can you describe the location	*	
24	where this car was when you searched it, sir?	-	
25	A Yes.	1	

Viggiano-cross

As I remember it that was the first and last time I had been to Max Fords, it is on Varick Street, just a little north of the entrance to the Holland Tunnel going towards Jersey, and as I remember it I identified myself to a man downstairs and we had to take the type of elevator that you put your car onto to get upstairs. I don't know if that was the only way of getting there or the way best suited.

I believe we went to the fourth -- the third -- the third or fourth floor, I am not sure.

To the best of my recollection the car was parked facing a wall, which seemed to be on the south side of the building.

Q Mr. Viggiano, to the best of your knowledge could anyone go in and out of that garage; could they not?

A I know I had to identify myself to get in, I don't know, I am not sure.

Q You don't know if Mr. Stoppiello was there before March 3, 1972, do you, sir?

MR. BERGMAN: Objection.

THE COURT: Overruled, I will allow it.

A I don't know.

Q You don't know of any other agents who were there before you were there on March 3, 1972, do you, sir?

A It was never told to me, that any other agents

MP:GA TIR1 AM2

THE COURT: All right, Mr. Schacher is here.
United States against Mauro, both sides ready.

I first want to ask Mr. Schacher something. I don't think I asked you whether you want me to Charge on the Defendant's failure to take the stand. Would you rather I said nothing, or do you want me to say to the jury, you may make no adverse inference --

MR. SCHACHER: I would rather have that.
THE COURT: All right.

MR. BERGMAN: In the DeCarlo case we discussed yesterday, as to whether or not fear is a necessary element the Government must prove, the reference is in the footnote. The Court said it appears that the state of mind of the victim is not only relevant to the crimes charged in the Indictment, but an essential element to be proved by the Government.

Now, the citation to that statement immediately following is 18 U.S. Code, Section 891(6).

Now, in this Section --

THE COURT: I have it.

MR. BERGMAN: 891, subdivision 6, refers to an exercionist's extention of credit, which is a term used in Section 892 of the Act. Where in that kind of a prosecution the Government must show at the time the extortionist's extension was made, the victim had in A-189

his mind a state of fear.

However, the prosecution in this case is under Section 894, which deals with the threats, regardless of whether or not the extension of credit was by the initial extortionate means or non-extortionate means.

Section 894 applies to any loans at all.

Now, in United States against Joines, which is a District Court case which dealt with the prosecution under 894, which, of course, is in this case, the Court says at page 254, as to the sufficiency of the evidence to sustain a conviction in this case, I have reviewed the transcript with great care in a light most favorable to the Government, and in drawing reasonable inferences therefrom, conclude there was sufficient evidence.

And then the Court stated the elements in each of the four Counts in which a verdict of Guilty was returned. There was sufficient evidence for the jury to find, one, that a loan was made; two, that an attempt was made to collect the loan; three, that extortionate means were used in the attempt; and finally, that the acts were done knowingly by the defendant.

Now, the Court does not speak in any terms about the fear of the victim at the time the transactions were made. I will hand a copy of the Joines case up to the Court.

to 892? I know that 894 talks about the debtor's reasonable belief, so it is a subjective feeling of the debtor, while 894 does not say it. In reading it, I think that 894 refers back to 892 -- using extortionate means. However, knowingly participating in any way.

Let me tell you this, I am not absolutely sure, but I am going to Charge it. You see, I must Charge, in any event, that they must find that the debtor must have reacted normally, not because of some personal peculiarity, that he is extraordinarily fearful of everything that happens. So it is close to saying the same thing, but until the Court of Appeals, or any Appellate Court says differently, I am going to Charge that the debtor must be in fear.

Now, I know that the language is different in 894 and 892 than it is in 2113, where I borrowed the idea from, because there it says specifically "placed lives in jeopardy." And you have to prove that the parties, the victim, actually believed that the life was in jeopardy. And an analogy may not be precise, but I don't think that the Section intends that every kind of a threat to collect becomes criminal.

I think the Congress had difficulty in classifying "demand," which can be pretty vigorous for repayment

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of a loan, where someone says, "I will murder you if I don't get paid," not meaning that he really intends to take the life of the debtor, and the debtor not being placed in fear that it is going to happen. In those cases, where it is intended to be a threat, and where the debtor believes it is a threat. It may be that ultimately the Appellate Court may say -- and if you read 894 alone, I concede that is the way I would interpret it. It is not what the debtor believes, but it is what the creditor intends. The intention to put him in fear. If he does, it is nevertheless a crime.

I think the Sections must be read together, and it may turn out I am wrong ultimately.

MR. BERGMAN: I read the DeLuctro case, the victim the Government put on the stand denied that he was in fear, and denied that threats were made to him. I was thinking of those circumstances.

THE COURT: It may be the jury didn't believe him.

MR. BERGMAN: I think the Court commented on that in terms of a prima facie case. In any event, I would request, as long as the question of fear is going to be given to the jury, that the jury would be Charged that Mrs. Stoppiello's state of mind, Patricia Stoppiello, may be considered on that issue.

And the Zitto case, decided on October 6, 1972,

Second Circuit, in which the state of mind of the victim's wife was allowed into evidence as bearing upon the state of mind of the victim.

THE COURT: You mean Mrs. Stoppiello's state of mind can be a standard as to whether Mr. Stoppiello was put in foar?

In other words, if it works on one, it works on the other?

MR. BERGMAN: Yes.

THE COURT: I am not going to Charge that. It may be that bearing on the question of whether he intended, but again, that is the state of mind of the defendant. No.

First of all, I think it is a very confusing concept, and secondly, I don't believe -- It may be what they are saying, and what the definition says, or what the elements in 892 say, that proof of the representation for violence is introducible, and isn't it strange that you tried to introduce it in 894, because it says so in 892, because there is a relationship between the Sections, and that's why I say the subject of fear is an element.

It is all borrowed from 892.

MR. BERGMAN: No doubt there is an interrelationship. I would say the interrelationship on the --

THE COURT: It could be, but I would rather charge this way.

MR. BERGHAN: Very well.

THE COURT: Seat the jury.

(The jury is in the jury box.)

THE COURT: Good morning, ladies and gentlemen.

We have reached that point in the trial where it becomes my duty to instruct you on the applicable law. You have found a paper, called memorandum of verdict, as you came in. It is only designed to help you recall what the charge is, so that you can focus on a particular charge.

This case involves two separate and distinct indictments, based on different statutes, and each count in these indictments must be judged separately, as if we had seven trials going at once.

You must determine whether the Government has met its burden in accordance with my charge on each count. You can set this aside momentarily. I will refer to the counts individually, and read the indictment, the exact language. You will find when I read the indictment that this is the nub of it, it is a summary of what is set forth.

But at the outset, we must recognize three welldefined areas of service and endeavor and obligation

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in a jury trial.

First, we have the lawyers. This is called an adversary proceedings. Parties contest over an issue, and the lawyers are adversaries. They represent clients. They are partial. They are wound up and bound up with their client's position. Mr. Bergman, no less than Mr. Schacher, has a client. And they both believe in their client's cause, and they are zealous, and that's the way it should be, the theory being, two lawyers of comparable ability contest over an issue, and the evidence is developed during the trial for the jury to see. It has worked pretty well over the few hundred ears of Anglo-American experience in adversary proceedings. It is not so in all countries. But in this country we feel it is a good method of producing the evidence so that the jury may look through it and seek out the truth.

And that's the duty of the jury, to find out the truth here.

Detween the attitude and relationship between the court and jury to the trial. The Court and jury are impartial, dispassionate, objective. Both the Court and court at this case with the same attitude. We are

removed from the personal interest that the lawyers bear to the issues in the case. I am disinterested on the matters that involve the law, and so is the jury — I shouldn't say disinterested — objective, because we are both interested in justice. We are objective in our approach, objective in the relationship that the jury bears to the issues of fact in the case.

Now, as between the Court and jury, there is, of course, a clear line of demarcation on what our duties and obligations are. I recognize and respect your authority as the judges of the facts. That means that you determine what happened.

You, on the other hand, must recognize and respect my authority as the judge of the law. And whether or not you approve or disapprove of how the law was enacted by the Congress, or how it is interpreted by me in my instructions is immaterial. You must accept it. It would be improper for you to decide that you don't like the law, and that you will fashion your own law. So you must accept the law as I give it, and I will accept your fact-finding, your ultimate verdict. I have no opinion as to how you should decide the case. All I charge you is you must decide the facts fairly, based on the evidence alone, and the fair and reasonable

inferences to be drawn from the evidence, and free of all bias, prejudice and sympathy.

In every criminal case the defendant is presumed to be innocent. The defendant in this case is presumed to be innocent of all the charges in both indictments. That means that yet ust conclude at the outset that he is not guilty of each and every charge in the indictment.

Now, that conclusion remains with the defendant throughout the trial, a d throughout your deliberations, and prevails unless the Government proves its case beyond a reasonable doubt. That means, if the Government has failed to prove its case beyond a reasonable doubt, then you must first the defendant not guilty. That's what we mean by the presumption of innocence. It is a time-honored presumption in Anglo-American law.

What is a reasonable doubt? A reasonable doubt is the kind of doubt a reasonable person would have after weighing all the evidence. It is not some vague, speculative or imaginary doubt. It is not some doubt that arises from a disinclination to perform an unpleasant task. A reasonable doubt is a doubt based on reason and common sense as arises from the evidence in this case. A reasonable doubt is the kind.

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of doubt that would cause a reasonable person to hesitate to act on in a matter of importance.

proof beyond a reasonable doubt is therefore proof of such a convincing character that you would be willing to rely upon it unhesitatingly in the most important of your own affairs.

The Government's burden is not to prove the guilt of the defendant beyond all doubt. It is to prove the guilt of the defendant beyond a reasonable doubt.

The Government's burden is not to prove to you that every bit of evidence offered during the trial is true beyond a reasonable doubt. The Government's burden is to prove every essential element of the particular crime charged beyond a reasonable doubt.

I will Charge you later on what the elements are in each crime charged. But you must keep in mind that the defendant need not offer any proof. The defendant has a right to rely on the failure of the Government to prove its case.

What is evidence? Evidence is the method the law uses to prove or disprove a fact. It is divided into two general classifications. We have direct evidence, indirect or circumstantial evidence.

I will give you an example that I have used repeatedly, and I think demonstrates the difference.

Direct evidence is the testimony of what a witness saw or heard.

Circumstantial evidence is a method by which the jury makes a reasonable inference, based on common sense and experience from established facts.

Let us resume that you were sitting here as a jury in a personal injury case. Mrs. Smith is suing Mr. Jones for the injuries she said she suffered when Mr. Jones negligently drove his car and struck her. Let us assume that my Courtroom Deputy Mr. Adler and myself are potential witnesses because on the particular day we were standing on a street corner at a stop sign and that Mrs. Smith claims the defendant never stopped at the stop sign, but passed it and struck her.

Now, if we were standing at the corner and Mr.

Adler had his back to the stop sign and I was facing
the street and had the stop sign in view and if I were
called as a witness I would give direct testimony.

I would say, in effect, I was on the corner with my
Courtroom Deputy and we were talking about any number
of things and I noticed Mr. Jones driving his 1974

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white Cadillac at about 65 miles an hour and as he approached the corner, passed the sign and struck Mrs. Smith.

The first thing you must do is identify the contested issue. Mr. Jones says he stopped before he proceeded past the stop sign. Mrs. Smith says, Oh, no, he passed the stop sign without stopping. That is the issue. That is where the parties are adversaries. I gave direct testimony when I said that I saw Mr. Jones driving his car at a rate of 65 miles an hour past the stop sign without stopping and strike Mrs. Smith. This is the direct testimony.

(continued on next page)

Now, Mr. Adler cannot testify to the direct act of passing the stop sign without stopping. But he is nevertheless a competent witness. He can testify to the circumstantial facts from which the jury may reasonably draw the inference that Mr. Jones passed the stop sign without stopping. He might say: I was talking to the judge and within my peripheral vision there came a 1974 Cadillac and I later learned the driver was Mr. Jones. I saw the car coming down at about 65 miles an hour and about two or three seconds later, after it had traversed about 150 feet, I happened to turn to my left and I saw Mr. Jones traveling at the same rate of speed and I saw him strike and knock down Mrs. Smith.

I think you will agree with me from those facts you might reasonably draw the inference that Mr. Jones drove his car past the stop sign without stopping.

was driving his car at 65 miles anhour. He traversed

130 feet in two or three seconds. I think you will

agree with me, if you believe those facts, you will

come to the conclusion, you will draw a fair inference,

that Mr. Jones passed the stop sign without stopping.

Thave used the term "inference" and used the term
"I resumption." In making a fair inference from the

circumstantial facts the jury has a discretion in drawing that conclusion. As to the other example, where I spoke of the presumption of innocence, the law requires you to draw that conclusion — and that conclusion prevails unless overcome by proof beyond a reasonable doubt to the contrary, to wit, the defendant's guilt.

If the Government fails to bring in proof of guilt beyond that standard, proof beyond a reasonable doubt, then the presumption prevails.

testimony of all the witnesses called regardless of who called the witnesses, as well as the exhibits that are actually marked in evidence. You may find incidentally that some documents were marked for identification. They were not marked in evidence. Well, at some future time you may ask for exhibits. If you ask for an exhibit marked only for identification, I can't send it in to you. It is not part of the case. It was identified with the witness' testimony so somebody who reads the testimony at a later date might know what the witness referred to. But the exhibits that are marked in evidence are a part of the record.

I don't know whether counsel stipulated to any (continued on next page)

facts but if they did, of course, that is part of the record.

I think it is important for you to know what is not part of the record. The statements made by counsel in both openings and summations are not part of the record. They serve a very useful purpose, and as I explained to you, in summation both lawyers argue the evidence. They offered argument of exculpability and inculpability. Mr. Schacher came before you and told you why the evidence showed the Government failed to prove its case beyond a reasonable doubt.

On the other hand, Mr. Bergman came before you and argued that the evidence was sufficient to prove the defendant's guilt beyond a reasonable doubt.

Again, they serve useful purposes in focusing on the evidence, bringing the evidence to your attention, offering these theories. And you may not agree with anything either counsel has said or you may find that what the lawyers said makes sense and you may consider it and may even accept it. Again, it is all within your discretion. These are guides to lead the jury to the truth.

At times, I sustained objections to questions

and you may not speculate on what the answer might have been if the Court allowed the witness to answer. The idea being that I sustain objections as a matter of law. I said it may not be answered. At times, I said strike the answer or strike the testimony.

As it is physically stricken from the record it must be stricken from your mind or memory. The idea being it is not in the record. Consider only what is in the record.

I might say at this point, during the trial I, in making rulings, intended to convey no opinion as to how I felt about the case. I rule on these matters strictly as a matter of law. If I admonished one lawyer or another it is not because I have any opinion of the case and you should not in any way get the idea that I am favoring one side or the other when I make a ruling. At a specific time it may appear to you that I am favoring a specific side, but it has nothing to do with your consideration, it is a ruling I must make. Sometimes I gave reasons and sometimes I said to the lawyer, "I don't want to hear argument."

I don't even recall what I said because to me it is not material. It goes into lost recollection immediately after I rule because it is not important

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and "ou shouldn't attach any importance to it.

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asked a few. Don't pay any special attention or attach any special significance to the questions I asked. When I ask a question it is because there is a confused area in my mind and in the hope that I might clear it up if it exists in your mind. That's

why I ask the questions, and that is the only purpose.

The jury is the sole judge of the credibility of the witnesses. That means the believability of the witnesses. You have the obligation of scrutinizing the testimony given and the circumstances under which each witness testified and every matter in evidence which tends to show whether a witness is worthy of belief.

You must consider each witness' intelligence, his motive and state of mind, his demeanor and manner while on the witness stand. You determine whether the witness avoided answering questions. You determine from what you saw of the witness, whether he was forthright in his answers. Take into consideration the witness' own ability to observe the matters as to which he has testified, whether he shall have impressed you as having an accurate recollection of these matters.

Consider the relation each witness might bear to either

Charge of the Court

side of the case; the manner in which each witness might be affected by the verdict; the extent to which, if at all, each witness is corroborated or contradicted.

The law does not compel a defendant in a criminal case to take the witness stand and testify.

No presumption of guilt may be raised and no unfavorable inference of any kind may be drawn in the failure of a defendant to testify.

The defendant, as previously charged, may rely on the failure of the Government to prove its case. It would be improper for you to discuss the failure of the defendant to take the witness stand.

The Government presented Mr. Louis Stoppiello.

Now, Mr. Stoppiello said that he participated in the crime. Now that admission, in and of itself, may in no way be used as evidence against the defendant — the mere fact he said "I participated in the crime."

But when he said, "I participated in the crime," he is classified as an accomplice.

Now, Mr. Stoppiello is not incompetent to testify because he is an accomplice. On the contrary, the testimony of an accomplice, if believed by the jury to be true beyond a reasonable doubt, may be of sufficient weight to sustain a verdict of guilty, even

though not corroborated or supported by other evidence.

However, the jury should keep in mind that such

testimony is always to be received with caution and

weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice unless you believe that unsupported testimony to be true beyond a reasonable doubt.

There is also proof that the defendant

Stoppiello was convicted of a felony. In other words,

a crime that carries a sentence of more than one year.

Now, Mr. Stoppiello is not incompetent to testify because he was convicted of a felony, but again you may take that into consideration in weighing his testimony.

The Government offers proof of both inculpatory and exculpatory statements, both as I recall, through the tapes and through Special Agent O'Connor.

Now, that doesn't mean they are inculpatory or they are exculpatory. Exculpatory means a statement saving, in effect, I am innocent, or tending to show it. Inculpatory statements mean admissions of quilt.

(continued on next page)

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Now, in determining whether you should consider either class of statements, you must first take into consideration all the circumstances under which those statements were made. The Government must prove beyond a reasonable doubt that the statements were knowingly, voluntarily, intentionally made.

That means that the defendant knew what he was saying.

The Government must prove beyond a reasonable doubt that before making the statements, the defendant was advised ofhis Constitutional rights and given warnings that the statements might be used against him; he was entitled to counsel, he had a right to remain silent and so forth.

Take into consideration all the statements that were made and consider only those statements that were knowingly, voluntarily and intentionally made. Those statements should be examined with great care.

Now, the Government said that -- or claimed, or argued, that the exculpatory statements were shown to be false. I think Mr. Bergman argued that when he told Agent O'Connor that the defendant Stoppiello owed him four hundred dollars, that he was trying to say he is innocent of the crime -- or any crime -- but

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this was untrue.

false, may show a consciousness of guilt. In other words, the law says if someone knowingly and intentionally lies about something to try to show that he is innocent, and the proof in the case shows he lied, that the statement was false, then taking that false statement and all the other circumstances into consideration, the jury may find that he made the false statement because he consciously, knowingly, felt he was guilty and that's why he made the false statement.

Normally, an innocent person does not find it necessary to make up a false story tending to show innocence.

But again, you weight all the circumstances and you decide what weight to be given to a false statement that you find, or an exculpatory statement that you find was false, and you give it whatever weight you think it deserves.

advise you that the indictment is no proof of the charge in the indictment. While I read a count, don't take that as proof of the charge. The defendant pleaded not guilty to each and every count in the

indictment and the Government must prove its case beyond a reasonable doubt, separate and apart from the statement in the count.

I will first turn to the indictment 72 CR 857.

Before I do that, I will read the statute upon which
the charge is based.

Now, what is a crime is defined by the Congress. In every felony, the crime consists of two major elements: the mens rea which is the Latin phrase for criminal intent, and proscribed conduct.

Within the proscribed conduct, you may find additional elements that comprise the element of proscribed conduct. But the Government must prove both criminal intent and proscribed conduct.

Now, I am going to read Section 894, or at least a pertinent part of it, upon which the three counts in the indictment are based.

894 says "Whoever knowingly participates in any way in the use of an extortionate means to collect or attempt to collect any extension of credit is guilty of a crime under 894."

Now, there are some definitions because legal terms used are not the terms used in everyday commerce.

"Extension of credit" usually means a loan or

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extension of the loan. The definitions are contained in the prior section, it says, in Section 891

Subdivision 1, "To extend credit, means to make or remember any loan, or to enter into any agreement tacit or expressed — tacit means where the parties understand what it is without saying so in so many words — "Whereby the repayment or satisfaction of any debt or claim where acknowledged or disputed, valid or invalid and however arising, may or will be deferred."

In common parlance, an extension of credit means a loan, a debt, an obligation.

Subdivision 6, defining extortionate means:

"An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made, that delay in making repayment or failure to make repayment, could result in the use of violence."

7: "An extortionate means is any means which involves the use or an express or implicit threat of use of violence."

Now, there was evidence in the case about vig, about juice, descriptions of shylocking and loan sharking. That's only pertinent to the motive, the

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reason that violence or a threat of violence is used.

But the crime charged is not usury, it is not
shylocking, it is not loan sharking. In a legitimate
non-usurious loan, someone using violence or a threat
of violence, could also be charged in the section.

Youmust keep in mind the defendant is not here charged with excessive interest. I say, it is in the case only because the Government is trying to show — whether it does or not, is entirely up to you — the reason for the use of extortionate means, and suggesting to you that because it was an illegal loan, the defendant could not resort to the courts to collect it. That's only the Government's suggestion. And you decide whether it is so or not.

The point I want to make to you is this defendant is not here because he charged excessive interest on these loans. And if that is all the Government has proved, find the defendant not guilty.

Now, count one, and here you may refer to the memorandum of verdict, the indictment charges:

"On or about the fifteenth of June, 1972, within the Eastern District of New York, the defendant Joseph F. Mauro, did knowingly --"

Now there is the criminal element --

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"Use extortionate means within the meaning of Section 891 (7) of Title 18, United States Code, to attempt to collect from Louis Stoppiello a debtor, an extension of credit, to wit the defendant Joseph M. Mauro did expressly and implicitly threaten the person of the said Louis Stoppiello with the use of violence and other criminal means."

That is alleged to be a violation of Title 18, United States Code, Section 894 (a).

Now, the Government must prove beyond a reasonable doubt all the following essential elements of the crime in order for you to find the defendant guilty of count 1 of 72 CR 857: One, that the loan was made — and whether or not the amount of the loan is in dispute is immaterial; two, that the accused knowingly made threats of physical harm to Louis Stoppiello, three, that such threats were made, A, to collect or attempt to collect the loan; or B, to punish Mr. Stoppiello for non-payment of the loan.

Now, the threats must be shown to have been made by the defendant knowingly. The Government must prove beyond a reasonable doubt, that the defendant was aware

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of the purpose of the threats, that the threats of bodily harm were made with intent to instill fear of bodily harm on Louis Stoppiello, for the purpose of collecting the debt. The fear must arise from the willful knowing conduct of the defendant, Joseph Mauro, rather than from some mere temperamental timidity of the debtor. It must be the emotional reaction of a reasonable debtor to the knowing threats made by the defendant Joseph Mauro. The Government must show that Louis Stoppiello was in fear, and those fears were the fears of a reasonable man.

Now, count two — I will read both count two and three because the Government charges threats were made on different, two different days, and they are separate times alleged, but the elements are exactly the same. The only difference being the date.

Count two: "On or about the 28th day of June,
1972, within the Eastern District of New York, the
defendant Joseph M. Mauro, did knowingly use extortionate means within the meaning of Section 891 (7) of
Title 18, United States Code, to attempt to collect
from Louis Stoppiello, a debtor an extension of
credit, to wit, the defendant Joseph M. Mauro, did
expressly and implicitly threaten to the person of
the said Louis Stoppiello with the use of violence and

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other criminal means, in violation of Title 18, United States Code, Section 894 (a)."

Count three:

within the Eastern District of New York, the defendant, Joseph M. Mauro, did knowingly use extortionate means within the meaning of Section 891 (7), of Title 18, United States Code, to attempt to collect from Louis Stoppiello, a debtor, an extension of credit, to wit, the defendant Joseph M. Mauro, did expressly and implicitly threaten the person of the said Louis Stoppiello with the use of violence and other criminal means in violation of Title 18 United States Code, Section 894 (a).

which the Government must prove beyond a reasonable doubt to counts two and three of 72 Cr 857 are: one, that a loan was made; two, that the accused knowingly made threats of physical harm to the debtor; three, that such threats were made, A, to collect or attempt to collect the loan; or B, to punish the debtor for non-repayment of the loan.

Counts one, two and three, of 72 Cr 858, charge

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the defendant with knowingly possessing the five hundred counterfeit bills or alleged counterfeit bills.

Count one charges possession. Count two charges a delivery and transfer of the same five hundred counterfeit bills.

And count three charges the transfer and delivery of the bills, ten bills, between October 1, 1971 and December 30, 1971.

Those are the ten bills that Mr. Stoppiello testified, as I recall, he received from the defendant Mauro, and that he gave to Special Agent Michael Reilly on two separate occasions while he was in the hospital. Fight bills, I think, on December 10, and two bills later that month, December 30 or 31.

Incidentally, when I give you my recollection of the evidence, dont take it for the Gospel truth, because my memory is no better than yours, but that's the way I remember it.

Those are the three separate counts involved in the possession and transfer of counterfeit money.

Now, I will read Section 472 of Title 18.

It says: "Whoever with intent to defraud keeps in possession or conceals any falsely made, forged counterfeit or altered obligation, is guilty

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of a crime under 472."

You will note that the language in the count is close to the language of the statute.

It charges:

"On or about the fourth day of January, 1972, within the Eastern District of New York, the defendant Joseph M. Mauro, with the intent to defraud, did possess and conceal approximately five hundred counterfeit ten dollar United States Pederal Reserve notes, bearing various serial numbers, one of which was serial number B77046377A, knowing the same to be forged and counterfeited, in violation of Title 18, United States Code, Section 472."

The essential elements of the crime charged in count one of 72 CR 858 are:

One, the act of possession or concealing five hundred falsely made forged and counterfeited ten dollar United States Federal Reserve notes; two, possession and concealing the said counterfeit notes knowingly with intent to defraud.

In other words, the Government must prove that
the defendant knew that the five hundred notes or
any portion of them were counterfeit forged and falsely

made. And that he possessed those notes with intent to defraud.

"Intent to defraud," means to act wilfully and with specific intent to deceive or cheat — ordinarily for the purpose of causing financial loss to anyone or bringing some financial gain to oneself.

Now, the Government doesn't have to prove that anyone actually lost money. The Government must prove that the possession was with the intent to cheat somebody.

When we talk about possession, we have two types of possession. One, we call actual possession and the other, constructive possession.

Actual possession means actual physical control over the thing possessed. Constructive possession means having the power to control, to give away, to destroy, or do anything — though not in actual physical control.

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In other words, I have my glasses in actual possession (indicating) and even if they were in my chambers, I have power over them, I could have my courtroom deputy get them for me.

If, however, they were with my optometrist I would have constructive possession, he would have actual possession. I have the right to get them from him, I have the right to do with them as I will.

The Government doesn't have to prove actual possession, it can prove constructive possession.

The Government may prove actual or physical possession, which possession can be single or joint. One may possess it holding it for both; the Government may prove that possession was jointly with the defendant.

I will read counts 2 and 3, because they both charge a violation of the same section. They charge the transfer and delivery of "falsely made, forged and counterfeited Ten Dollar United States Federal Reserve Notes," in count 2 and in count 3 possession of such notes.

Count 2:

"On or about the fourth day of January

1972, within the Eastern District of New York,

the defendant Joseph M. Mauro, wilfully, and

knowingly" --

And there again, it is the criminal intent which must be proved --

"Did transfer and deliver approximately five hundred falsely made, forged and counterfeited Ten Dollar United States Federal Reserve Notes, bearing various serial numbers, of which one was serial number B77046377A, with the intent that the aforesaid notes be passed, published and used as true and genuine."

This is in violation of Title 18, United States
Code Section 473.

Count Three:

"On or about and between the first day of October 1971 and the 30th day of December, 1971, both dates being approximate and inclusive, within the Eastern District of New York, the defendant, Joseph M. Mauro, wilfully and knowingly did transfer and deliver ten United States Federal Reserve notes, bearing serial numbers B62096377A, B77046242A and B77046377A, with the intent that the aforesaid notes be passed published and used as true and genuine."

Section 473 of Title 18 defines the crime as

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follows:

"Whoever transfers or delivers any false, forged, counterfeited or altered obligation or other security of the United States"

Commits a violation of the Section.

I charge you that a Ten Dollar Federal Reserve

The Government must prove beyond a reasonable doubt in order for you to find the defendant guilty of the crimes charged in count two and three of 72-CR-858:

One: The act of transferring and delivering
in Count two five hundred falsely made, forged and
counterfeited Ten Dollar Federal Reserve Notes, and
in Count Three, Ten falsely made, forged and counterfeited
United States Ten Dollar Federal Reserve Notes.

Two: Transferring and delivering the said notes with intent that they be passed, published and used as true and genuine.

There is the criminal intent: The Government must prove that the intent was to pass them into the general stream of currency and represent the bills as genuine money.

The Government must prove beyond a reasonable doubt that the defendant knew that the notes were

counterfeit.

The Government need not prove that the defendant committed each and every act dessential to the commission of the crime.

Under Section 2 of Title 18, a jury may, if the Government has proved the elements beyond a reasonable doubt, find the defendant guilty as an aider and abettor.

Section 2 recites the following:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b): Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

In other words, any person who wilfully participates in the commission of a crime may be found to be guilty of that offense.

Participation is wilful if done voluntarily and intentionally and with the specific intent to do something the law forbids.

In order to aid and abet another to commit a crime it is necessary that the accused wilfully associate A-222

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himself in some way with the criminal venture, and wilfully participate in it as he would in something he wishes to bring about.

You of course, may not find the defendant guilty of aiding and abetting unless the crime was committed.

Now, I have got about, well, probably 15 or 20 minutes more. If any of you are tired or bored, I am willing to call a short recess, and call you back.

Would you like to take a short recess, or can you go it?

I saw one or two say, Go ahead, so I will do it.

It is very difficult to sit by the hour just listening,
and I recognize that.

Now, Count four in the 72-CR-858, is a concept separate and apart from all the other crimes that I just charged you in 72-CR-857, or in the first three crimes of 72-CR-858.

what the Congress says is a crime is the understanding, is the agreement to commit a crime, so even if the crime is never committed, the Congress said it is still a crime, that is, if two or more persons participate in what we call an unlawful conspiracy and the Government proves an overt act, and that is the difference between aiding and abetting and conspiracy.

abetting and I said, If you find the crime had not been committed, in other words if the counterfeiting substantive crime had not been committed, you may not find the defendant guilty. The aiding and abetting only refers to the counterfeiting crimes charged in 858 and the conspiracy refers only to the crimes of possessing and delivering counterfeit money. When I charged that the defendant may be found guilty of aiding and abetting, I said, But he can only be found guilty of aiding and abetting if the crime was completed, if somebody committed it.

In other words, if you find that Louis Stoppiello actually committed the crime and you find under my charge that the defendant aided and abetted in the commission of that crime, then the defendant Mauro, would be guilty of the crime. If you find that Stoppiello did not commit the crime, then the defendant could not be held criminally liable for aiding and abetting because it is the aiding and abetting of a completed crime.

conspiracy, in theory, at least, is the agreement, it is the understanding and that is what the Congress says is a crime. They must go a little further than just

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talking, as I explained to you, there must be an overt act; but the crime contemplated need not be completed in order for it to be a crime.

I will read the Section first, and it is known as the conspiracy section.

Sertion 371 is captioned, "Conspiracy to commit an offense, or to defraud the United States."

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"If two or more persons conspire, either to commit any offense against the United States or to defraud the United States and one or more of such persons do any act to effect the object of the conspiracy" the crime is completed, the conspiracy statute is violated.

So a conspiracy is a combination of two or more persons organized to accomplish an unlawful objective.

Conspiracy is a kind of partnership in criminal purposes and in which, one member becomes the agent of the other.

The gist of the offense again is the combination or agreement to violate the law.

that the parties associated with each other, the mere fact that they talked and they had mutual interests, does not necessarily establish the existence of the conspiracy. However, the evidence in the case need not show that the parties — and the parties here charged are the defendant Joseph M. Mauro and Louis J. Stoppiello — need not show that they entered into any express or formal agreement or that they directly or by words, or in writing, stated between themselves what their objective or purpose was to be or the details or the means through which the objective or purpose was to be

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beyond a reasonable doubt is that they in some way or through some contrivance; positively or passively came to some understanding to try to accomplish a common and unlawful plan.

Now, coming to the fourth count in the indictment:

"On or about and between the first day of October,

1971, and the fourth day of January, 1972, within

the Eastern District of New York, the defendant

Joseph N. Mauro and Louis J. Stoppiello, mot

named herein as a defendant, did unlawfully,

knowingly, wilfully and feloniously conspire,

combine, confederate and agree together with

each other to violate Title 18, United States

Code, Section 472, in that they did, with intent

to defraud, agree to possess, conceal and sell

falsely made, forged, counterfeited and altered

obligations and securities of the United States,

knowing the same to be falsely made, forged,

counterfeited and altered.

"In furtherance of and for the purpose of effecting the object of the aforesaid conspiracy, the defendant Joseph M. Mauro, committed the following:

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"Overt act:

"On or about the fourth day of January, 1972, within the Eastern District of New York, the defendant Joseph M. Mauro, did meet with Louis Stoppiello and deliver to him approximately five hundred altered obligations and securities of the United States."

In violation of Title 18, United States Code, Section 371.

The Government must prove beyond a reasonable doubt that the conspiracy described in the indictment was wilfully formed, and was existing at or about the time alleged.

In other words, the Government must prove beyond a reasonable doubt, that Mr. Mauro and Mr. Stoppiello in their discussions conducted those discussions with specific intent to enter into a criminal conspiracy and that they knew they were violating the law when they were doing and talking about the things that they were doing and talking about.

Two: That the accused wilfully became a member of the conspiracy, that is, that this defendant entered into this understanding, knowing that it was a violation of law, and entered into it with the intent that what

he was doing would violate the law.

In determining whether the defendant knowingly and wilfully entered into the conspiracy, you must consider only the testimony of what the defendant said or did. Mr. Stoppiello's description of what he did can not be considered to determine what Mr. Mauro did.

But Mr. Stoppiello's testimony as to what this defendant said and did, the case, the admissions, if you believe the testimony — and that again, is solely up to you — may be considered to determine whether he entered into the conspiracy, if there were one, wilfully.

of course the Government charges Mr. Stoppiello and Mr. Mauro, two persons, with entering into a conspiracy. You must have at least two, so if you find that only one decided he would enter into a conspiracy, you cannot have a violation of this section.

The conspiracy consists of two or more; both have to understand and come to some tacit agreement.

Third, the Government must prove that one of these conspirators thereafter, knowingly committed at least one -- I will modify that: That the conspirators knowingly committed the overt act charged in the indictment.

The Government must prove that this happened:

That on or about January 4, 1972, Joseph Mauro
met with Louis Stoppiello and Joseph Mauro delivered
to him approximately five hundred altered obligations
and securities of the United States, and that the
overt act alleged in the indistment was knowingly done,
in other words, they were aware that it was counterfeit
money and was done in furtherance of the objective
or purpose of the conspiracy, which was to possess and
conceal falsely made United States Pederal Reserve Notes,
Ten Dollar Notes.

Now, you will shortly be excused from the courtroom to deliberate on the matter, and that means going over the evidence, exchanging views with your associate jurors, with a view to arriving at a unanimous verdict.

The verdict does not become the verdict of the case or of a count in the indictment unless all the jurors agree.

Now, if you wish, you may report when you arrive on a unanimous verdict as to any count in either indictment; that is your choice, or you may wait until you arrive at all the verdicts.

But give each count your serious consideration.

Now, during your deliberations, you will have

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reason to communicate with the Court, you will do that through your Foreman. If you want to hear any testimony, just write a note and say, We would like to hear the testimony of so-and-so. If you would like to hear the tapes, that will be done in open Court, because the equipment is here.

If you want to see any of the exhibits, just write a note and say, "We would like to see all the exhibits", and I will send all the exhibits in.

If you want to see a particular exhibit, say you want to see a particular exhibit.

Do not tell me during your deliberations, how you stand at any time, do not tell me you are six to six, ten to two, eleven to one, I amnot interested in that.

When you have a verdict, then say, We have a verdict. Do not tell me what the verdict is. The first time you report the verdict is when, after I receive a note, I call you back into court and ask the Foreman to stand. I will say, I have your note, I received your note saying that you have arrived at a verdict. In effect I will say:

In United States of America against Joseph Mauro, as to count one, how do you find the defendant, guilty

or not guilty?

And you will tell me.

I will go down as to every count that there is in that way, and that will become the verdict in this case, when it is recorded by the reporter.

So don't tell me what the verdict is before or how you stand.

I said that the jurors have an obligation of discussing the evidence with a view to arriving at a unanimous verdict. It would be improper for a juror to be intransigent and stubbornly to refuse to talk to his fellow jurors: It is a violation of your duty. The jury process is a deliberating process. It is wrong for a juror to come in and say, Well, I feel this way about the case and I don't want to talk to you. When the eleven jurors come around to my way of thinking let me know. It is wrong.

It is equally wrong for any juror to abandon his obligation and say, Well, I never argue with anyone, you know, anything you want me to do is all right with me. That is wrong, too.

The verdict of the jury is the considered determination of twelve jurors arriving at a unanimous verdict.

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Now, at this time, I will excuse you and I will talk to the lawyers for a few minutes and I will them call you back into the courtroom.

Don't start your deliberations yet.

(At this point, the jury left the courtroom.)

(Continued on next page.)

*

USV- mauro

STATE OF NEW YORK

COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 30 day of Supert upon

attorney(s) for appelled

in this action, at 225 Cadman Plaza East Brooklyn, NY.

the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

ROBERT BAILEY

Sworn to before me, 1

WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1976